

AGREEMENT BETWEEN COUNTY OF MONTEREY AND BLACK & VEATCH CORPORATION

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and BLACK & VEATCH CORPORATION, hereinafter referred to as “CONTRACTOR.”

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT including all its Attachments and Exhibits.

Exhibit A – Scope of Services

Attachment A – Pricing Sheet

Exhibit B – Non-Disclosure and Confidentiality Agreement

- 1.2 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.3 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.3.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.4 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.
- 1.5 CONTRACTOR warrants that it will perform the services in accordance with the standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature in existence at the time of performance of the services. If, during the one-year period following completion of the services, it is shown there is an error in the services caused solely by CONTRACTOR's failure to meet such standards and County has notified CONTRACTOR in writing of any such error within that period, CONTRACTOR shall re-perform, at no additional cost to County, such services within the

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original scope of services as may be necessary to remedy such error. CONTRACTOR shall have no liability for defects in the services attributable to CONTRACTOR's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by County or third parties retained by County.

- 1.6 The obligations and representations contained in this Section 1.0 are CONTRACTOR's sole warranty and guarantee obligations and County's exclusive remedy in respect of quality of the services. ***EXCEPT AS PROVIDED IN THIS ARTICLE, ENGINEER MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO ENGINEER'S SERVICES AND ENGINEER DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*** This Section governs, modifies, and supersedes any other terms in this AGREEMENT which may be construed to address warranties or guarantees or the quality of the services.

GENERAL DESCRIPTION

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

CONTRACTOR hereby agrees to perform the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: **Provide architectural, engineering, and design (A & E) services to support remedial work to fix deficiencies identified at County radio communications sites.**

2.0 SCOPE OF SERVICE

- 2.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall personally perform, with its own organization, at least 50 percent of the contract work, except that any designated 'Specialty Items' may be performed by subcontract. The amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its own organization.
- 2.2 Project Schedule: CONTRACTOR shall provide and maintain the project schedule to reflect the project status. The schedule shall be reviewed and approved by both the CONTRACTOR and the County to ensure project tasks, milestones, resources, and critical paths are accounted for. The project schedule shall consider the County's full service request(s) as outlined in **EXHIBIT A – SCOPE OF SERVICES**, Section III Contractor Responsibilities.
- 2.3 CONTRACTOR'S duties include but are not limited to: Items listed in **Exhibit A Scope of Services**.

3.0 TERM OF AGREEMENT

- 3.1 The initial term shall commence on February 15, 2022 through and including February 14, 2024, with the option to extend this AGREEMENT for one (1) additional one (1) year period.
- 3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.2 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the intended date of increase, which shall be on a yearly basis, in order to be considered.
- 3.2.1 Both parties shall agree upon rate extension(s) or changes in writing.
- 3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice, or for Good Cause upon written notice to CONTRACTOR in the event that CONTRACTOR fails to commence remedying the breach in good faith within 10 days thereof. "Good Cause" means the failure of CONTRACTOR to materially perform the required services at the time and in the manner provided under this AGREEMENT, or CONTRACTOR's insolvency or bankruptcy. If County terminates this AGREEMENT for Good Cause, the County may proceed with the work in any manner, which County deems proper.
- 3.4 Should County commit a breach or default of any of the covenants or obligations hereunder, and thereafter fail to commence remedying the same within 10 days after written notice thereof from CONTRACTOR and thereafter fail to proceed diligently in remedying the same, then CONTRACTOR may terminate this AGREEMENT.
- 3.5 Termination of this Agreement shall not terminate CONTRACTOR's duty to defend, indemnify and hold harmless the County, as provided in Section 6 of this AGREEMENT, nor terminate CONTRACTOR's obligation to maintain insurance, as provided in Section 7 of this AGREEMENT.

4.0 COMPENSATION AND PAYMENTS

- 4.1 For the services described in this Agreement, the maximum obligation of the County will be \$500,000. Although limited by this "not to exceed" amount, the County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT. CONTRACTOR will provide A & E services and will be compensated for those services on an "as-incurred" basis. As more fully described in Exhibit A, the Scope of Services, all A & E services will be formally requested by County in writing; CONTRACTOR shall thereafter provide a quote for the specific A & E services requested by. Quotes shall be provided by the CONTRACTOR in the format set forth in

ATTACHMENT A – PRICING SHEET, or in such format as County finds acceptable. County will thereafter accept, reject, or negotiate with CONTRACTOR on the pricing of the A & E services requested. Both parties shall exercise good faith in determining and assessing pricing.

- 4.2 In the event that either County or CONTRACTOR believes that the A & E services requested from CONTRACTOR will exceed a total of \$500,000, the additional amount will be agreed to in a written amendment executed by both parties. Any A & E services exceeding \$500,000 in value must be approved in advance in writing by County.
- 4.3 In the event that the Agreement is terminated prior to completion of the services, County shall pay CONTRACTOR for only those A & E services rendered up to the date of termination, to County's reasonable satisfaction.
- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.5.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the department at the following address:
- County of Monterey IT Department
Infrastructure Division
1590 Moffett St.
Salinas, CA 93905
- 5.2 CONTRACTOR shall reference the Purchase Order number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of specified A & E services, but in any event, not later than 30 days after completion of the quoted and mutually agreed upon A & E services. The invoice shall set forth the amounts claimed by CONTRACTOR, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for

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payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. In the event County disputes any invoice item, County shall give CONTRACTOR written notice of such disputed item within 10 days after receipt of such invoice and shall pay to CONTRACTOR the undisputed portion of the invoice according to the provisions hereof.

- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing through an Amendment executed by both parties.

6.0 INDEMNIFICATION

- 6.1 For purposes of the following indemnification provisions (“Indemnification AGREEMENT”), “design professional” has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification AGREEMENT is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification AGREEMENT and such other terms and provisions shall continue in full force and effect.
- 6.2 Indemnification for Design Professional Services Claims:
CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any third-party claims to the extent arising out of the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this AGREEMENT, excepting liability arising from the negligence, recklessness, or willful misconduct of County, or defect in a design furnished by County.
- 6.3 Indemnification for All Other Claims or Loss:
For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR’s performance of design professional services under this AGREEMENT, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any third-party claim for loss, injury, damage, expense or liability resulting from injury to or death of third-party or damage to third-party property, to the extent arising from the negligent, willfully wrongful, or reckless performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the negligence, recklessness, or willful misconduct of COUNTY, or defect in a design furnished by COUNTY.
- 6.4 Notwithstanding any other provision of this AGREEMENT, CONTRACTOR’s obligation to defend, indemnify and hold harmless COUNTY, as specified above, shall survive the

termination or expiration of this AGREEMENT for a term to include the applicable statute of limitations on claims related to CONTRACTOR's performance pursuant to this Agreement.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR upon the filing of a claim shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and in the aggregate.

7.3.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of \$1,000,000 combined single limit.

7.3.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California

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Labor Code section 3700 and with Employer's Liability limits of
\$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each
disease.

7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for one year following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company reasonably acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of one year following the date CONTRACTOR completes its performance of services under this AGREEMENT.

7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of cancellation or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have 15 calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Non-Disclosure Agreement: CONTRACTOR has previously agreed to protect and maintain the confidentiality of County information in a Non-Disclosure Agreement attached hereto in **EXHIBIT B - NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT**, attached herein. The obligations set forth in Exhibit B to maintain confidentiality are fully incorporated into this Agreement and apply to all sensitive and confidential information shared by County with CONTRACTOR in the performance of this Agreement. CONTRACTOR's obligations, as described in Exhibit B, continue as set forth in the original Non-Disclosure Agreement and do not expire with the termination or expiration of the Agreement.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT. Notwithstanding the foregoing, CONTRACTOR may retain one copy for archival purposes, subject to the terms of this Agreement.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under

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the AGREEMENT. CONTRACTOR shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or of costs which are expressed in terms of percentages of other costs. CONTRACTOR's records shall be subject to a one-time audit.

- 8.5 Royalties and Inventions. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of CONTRACTOR. County shall have a royalty-free, exclusive and irrevocable (except in the event of a breach) license to reproduce and use all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced by CONTRACTOR for County under this Agreement to the extent necessary for the construction, operation, maintenance, repair, or alteration of the services. CONTRACTOR shall not publish any such material related to the Services without the prior written approval of County.
- 8.6 Rights to Work Product. Except as otherwise provided herein, sealed original drawings, specifications, reports, and other engineering documents which CONTRACTOR prepares and delivers to County pursuant to this Agreement (“Work Product”) shall become the property of County when CONTRACTOR has been compensated for the Services.
- 8.7 Instruments of Service. All Work Product is an instrument of service with respect to the services. Work Product is not intended or represented to be suitable for reuse on extensions of the project or any other project. Any such reuse without prior written approval, and verification or adaptation by CONTRACTOR for the specific purpose intended will be at County's sole risk and without liability or legal exposure to CONTRACTOR.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: In the performance of work, duties, and obligations under this AGREEMENT, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this AGREEMENT to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this AGREEMENT. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes. CONTRACTOR shall control the manner and means of accomplishing the A & E services contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform within its own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR within its own organization.
- 10.3 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the A & E services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 10.4 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 10.5 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 10.6 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement
- 10.7 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in AGREEMENT.

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- 10.8 CONTRACTOR shall be responsible for the safety of its own employees at all times during the performance of the AGREEMENT. CONTRACTOR shall not, however, have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction; for the acts or omissions of County's contractors, vendors or suppliers; or for the safety or environmental precautions and programs in connection with the construction work performed by County's construction contractors. CONTRACTOR shall not be responsible for the adequacy or completeness of any construction contractor's safety or environmental programs, procedures, or precautions, and CONTRACTOR shall not have the authority to stop work.
- 10.9 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 10.10 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 10.11 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar A & E services.
- 10.12 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 10.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 10.14 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 10.15 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement.
- 10.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

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- 10.17 Changes. County may initiate a change by advising CONTRACTOR in writing of the change believed to be necessary. As soon thereafter as practicable, CONTRACTOR shall prepare and forward to County a cost estimate of the change that shall include the adjustment to CONTRACTOR's compensation, schedule of payments, project schedule, and completion date applicable thereto. If County approves the change, CONTRACTOR shall perform the Services as changed. CONTRACTOR may initiate changes by advising County in writing that in CONTRACTOR's opinion a change is necessary. If County agrees, it shall advise CONTRACTOR, and the change shall be handled as if initiated by County.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.
- 11.2 No CONTRACTOR or sub-contractor (or consultant or sub-consultant) is permitted to work on the same project in more than one capacity. CONTRACTORS that have staff or sub-contractors in common may not work on the same project. This prohibition includes, but is not limited to, a CONTRACTOR performing work under its own contract and performing work as a sub-consultant under a separate contract on the same project. Work on a single project by a CONTRACTOR in its capacity as the primary CONTRACTOR as well as sub-consultant or sub-contractor is presumed to constitute a conflict of interest.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses and pay all charges and fees required for CONTRACTOR to be licensed and authorized to perform the Services, and give all notices required by law in the performance of the Services. County shall be responsible for all County-required permits and licenses.
- 12.2 CONTRACTOR shall report promptly to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the performance of the Services.

- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF IMPORTANCE

Time is of the importance in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

- 15.1 Assurance of Performance: If at any time, there is substantial evidence that CONTRACTOR is not adequately performing its obligations under this AGREEMENT or that CONTRACTOR will fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. When County accepts CONTRACTOR's proposed plan, it shall issue a signed waiver.
- 15.1.1 Waiver: No waiver of a breach, failure of any condition or any right contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, or right. No waiver of any breach, failure, or right shall be deemed a waiver of any other breach,

failure, or right, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 BACKGROUND CHECKS

16.1 CONTRACTOR shall be required to obtain State and Federal level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office.

16.1.1 A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to County prior to the personnel being allowed to work within such County facilities. CONTRACTOR shall be responsible for the cost of these background check costs unless otherwise informed by County. In some circumstances, a specific County department may request that County Sheriff's Office perform the background checks.

All CONTRACTOR personnel who are designated to provide services at any of the County Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office specifically.

17.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed and emailed to the parties shall be addressed as follows:

TO COUNTY:
Alex Zheng, Deputy Chief Information Officer
Information Technology Department
County of Monterey
1590 Moffett Street, Salinas CA 93901
Email: ZhengA@co.monterey.ca.us

TO CONTRACTOR:
Leslie Paramo, Regional Director
Black & Veatch Corporation
5 Peters Canyon, Ste. 300, Irvine, CA 92606
Irvine, CA 92606
Email: paramole@bv.com

18.0 RIGHTS AND REMEDIES

- 18.1 In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR. CONTRACTOR shall be compensated for all remaining costs incurred and compensation earned for Services then performed in accordance with the provisions of the Agreement.
- 18.2 CONTRACTOR makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth herein. The parties' rights, liabilities, responsibilities and remedies with respect to the Services shall be exclusively those expressly set forth in this Agreement and are in lieu of any others available at law or otherwise. Indemnities against, releases from, and limitations on liability, and limitations on remedies expressed in this Agreement, as well as waivers of rights, including, but not limited to, subrogation rights, shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability of the party indemnified or released or whose liability is limited or allocated to the indemnitor, or against whom remedies have been limited, and shall extend to the officers, directors, partners, employees, licensors, agents, subcontractors, vendors and related entities of such party.

19.0 FORCE MAJEURE

- 19.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, acts of nature or unusually severe weather such as volcanic eruption, landslide, wildfire, earthquake, flood, tornado, hurricane, or flood, riot, war, terrorism, strikes, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 19.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 19.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure and shall be entitled to a Change Order. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.
- 19.4 Either Party may terminate the AGREEMENT if performance is delayed by Force Majeure for more than 90 days in the aggregate, in which case CONTRACTOR shall be compensated as set forth in Section 4.3.

20.0 TRAVEL REIMBURSEMENT

- 20.1 If travel expenses are to be reimbursed, they must be approved in writing in advance.
- 20.2 If County approves travel, lodging and meal reimbursement, CONTRACTOR shall receive compensation for travel expenses as per the “Monterey County Travel and Business Expense Reimbursement Policy”. A copy of the policy is available online at: http://www.co.monterey.ca.us/auditor/pdfs/County_Travel_Business_Expense_Policy_12-5-12.pdf . To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

21.0 LEGAL DISPUTES

- 21.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction’s laws.
- 21.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 21.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute, so long as County continues to pay any undisputed amounts.

22.0 DAMAGES

- 22.1 Limitations of Liability. Having considered the risks and potential liabilities that may arise out of the Services, the benefits of the Services and in specific consideration of the promises contained in this AGREEMENT and other valuable consideration receipt of which is acknowledged, County and CONTRACTOR allocate and limit such liabilities in accordance with this provision. Notwithstanding any other provision of this AGREEMENT, and to the fullest extent permitted by law:
- 22.1.1 In no event shall CONTRACTOR or County (or their related companies) be liable to the other for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect, punitive, or exemplary damages in any way arising from or related to the performance of this AGREEMENT.
- 22.1.2 The total cumulative liability of CONTRACTOR and any of CONTRACTOR's related companies to County for all claims, losses, damages, and expenses in any way arising from or related to the performance of this AGREEMENT shall not be greater than compensation received by CONTRACTOR under this Agreement.

23.0 SIGNATURE PAGE

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Chief Information Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹ DocuSigned by:
Katherine Hansen
16878463597F46B...

By: _____

Date: 3/4/2022 | 8:45 AM PST
County Counsel

Approved as to Fiscal Provisions² DocuSigned by:
Joey Molasco
F60C442ED05B437...

By: _____

Date: 3/7/2022 | 9:27 AM PST
Auditor/Controller

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

BLACK & VEATCH CORPORATION

Contractor's Business Name*

DocuSigned by:
Fred Ellermeier
CA08F4EC552E4EF...

(Signature of Chair, President, or Vice-President)*

Fred Ellermeier, Vice President, Connected Communities

Name and Title

3/1/2022 | 3:56 PM PST

Date:

DocuSigned by:
Michael Williams
A4E6526D47654B9...

By:

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Michael Williams, Treasurer, Black & Veatch

Name and Title

3/1/2022 | 4:40 PM PST

Date:

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 6 or 7

EXHIBIT A – SCOPE OF SERVICES

I. Scope of Services

The County of Monterey (County) is tasked with repairing deficiencies identified with structures and systems which support County enterprise and public safety communication systems. The unique requirements of a radio communications site coupled with the permitting requirements require technical engineering and design services before commencement of remediation construction activities.

The County is seeking architectural, engineering, and design services (A&E services) from Black & Veatch Corporation (CONTRACTOR) to assist in preparing of construction documents (CD's) required for permitting as required. The construction documents will be used to procure construction contractor(s) whom will repair deficiencies identified at County sites as specified by the CONTRACTOR.

CONTRACTOR may be asked to provide any of the following services under this Agreement, at any site requested by County, but not limited to:

General Scope of Work

Engineering Services

- Site walks to gather additional information necessary to develop the construction documents and permitting and regulatory applications
- Boundary and topographic services as required
- A&E services for construction documents, reports, and regulatory approvals to accommodate the Proposed Improvements and New Construction as required which may include, but not limited to:
 - Surveys, mappings, and documentation review
 - Civil/Access Roads/CD's and Specifications/As-Builts
 - Structural
 - Geotechnical
 - Grounding
 - Fire Suppression
 - HVAC (w/Electrical Supply)
 - Controls (Remote Monitoring – see below)
 - Electrical (Emergency power, generator, uninterruptible power supply, battery back-up)
 - Telecommunications backhaul optimization
- Zoning and regulatory services as required
- Permit Acquisition Support (with the County's Assistance)
- Engineer's Construction Cost Estimate (for Building Permit Submittal and County Budgeting).

Black & Veatch Corp. & Monterey County
Communications Site Repair Design and Engineering Service Agreement

- Construction Phase Support and Inspections
- Record drawings of the site showing the as-built conditions
- Site Acceptance and Certification (that deficiencies have been addressed per the construction drawings)
- Calculation and CD's reproduction as needed

Construction Support Services

- Attend construction kick-off meeting. The number of CONTRACTOR's staff to attend the meeting will be coordinated with the County before the kick-off meeting.
- Provide review and response to shop drawings
- Provide review and response to RFI's (Request for Information)
- Provide review of site inspection reports

II. County Responsibilities

- a. County will provide a point of contact for services requests.
- b. County will provide the preliminary information that exists for the radio communications site to CONTRACTOR when requesting a quote for services for each site.
- c. County shall provide a written service request to CONTRACTOR prior to proceeding with any services for a site.

III. Contractor Responsibilities

- a. Upon receiving the service and quote request from County, CONTRACTOR shall provide a written proposal to include all the applicable steps, services, and deliverables that will be performed by CONTRACTOR and/or subcontractor in developing and/or repairing a radio communications site. The proposal shall include a project schedule to include project tasks, milestones, resources, and critical paths are accounted for. The proposal shall provide County with pricing in the format, or substantially similar format, specified in Attachment A to this Scope of Services.

Black & Veatch Corp. & Monterey County
 Communications Site Repair Design and Engineering Service Agreement

Tasks	Feb-22	Feb-23	Feb-24	Total
Engineering & Land Services	✓	✓	✓	\$325,000
Comprehensive Site Assessment	✓	✓	✓	
Engineering Design Drawings	✓	✓	✓	
Sitewalks	✓	✓	✓	
Building Permit Services	✓	✓	✓	
Zoning Services	✓	✓	✓	
Regulatory Services	✓	✓	✓	
Utility Coordination	✓	✓	✓	
Shelter Coordination	✓	✓	✓	
Engineering Cost Estimates	✓	✓	✓	
WiFi System Design and Permitting	✓	✓	✓	
Construction Support Services (T&M)	✓	✓	✓	\$15,000
Project Management Services	✓	✓	✓	\$160,000
Overall Total				\$500,000



ATTACHMENT A – PRICING SHEET

Task Description	Site 1	Site 2	Site xx	Total
A&E Services				
Project Supporting Services				
Project Management				
Site walks				
Building Permit Services				
Zoning Services				
Regulatory Services				
Engineer's Construction Cost Estimate				
Subcontractors				
Engineering Services				
Engineering Design - Civil/Access Roads/CD's/As-Builts				
Engineering Design - Structural				
Engineering Design - Grounding				
Engineering Design - Fire Suppression				
Engineering Design - HVAC (w/Electrical Supply)				
Engineering Design - Controls (Remote Monitoring)				
Engineering Design - Emergency Power / Generator/ UPS				
Engineering Design - Telecommunications Optimization				
A&E Services - Subtotal (Lump Sum Basis)				
Optional Tasks				
Site Assessment				
[fill in as needed]				
Optional Tasks - Subtotal (Lump Sum Basis)				
Total A&E				
Construction Support				
Construction Phase Support				
Site Acceptance and Certification				
Total Construction Support (T&M)				

EXHIBIT B

VENDOR NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT

This vendor non-disclosure and confidentiality agreement (“Agreement”) is between The County of Monterey (hereinafter referred to as “County”), acting through its Information Technology Department, and Black & Veatch Corporation (hereinafter referred to as “Company”) a vendor, having a business address at, 10950 Grandview Drive Building 34, Overland Park, KS. 66210

Whereas, Company wishes to receive certain confidential and proprietary information technology information (hereinafter collectively “Information”) pertaining to the County’s microwave systems, wireless radio systems, data network, and other associated systems hardware.

Whereas the parties agree that this exchange includes all communication of Information between the parties in any form whatsoever, including oral, written, graphical, and machine-readable form, pertaining to the above; and

Whereas, Company wishes to receive the Information for the sole purpose of completing **onsite surveys, audits of existing microwave equipment and supporting architecture, technical consultation to prepare a migration and systems upgrade strategy for the design and construction of the County’s microwave systems;** and

Whereas, County is willing to disclose the Information and Company is willing to receive the Information on the terms and conditions set forth herein.

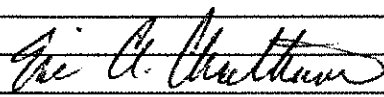
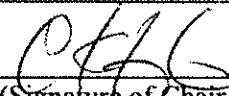

Now, therefore, County and Company agree as follows:

1. That the disclosure of Information by County is in strictest confidence and thus Company shall:
 - a. Protect and preserve the confidential nature of the Information, including taking reasonable physical, technological, and administrative security measures, and
 - b. Not disclose the Information to any party, or person, not a party to this Agreement, except for sub-contractors of Company who have previously agreed to confidentiality agreements no less restrictive than as set forth herein, and whose sub-contracts and confidentiality agreements have been reviewed by County, and
 - c. Exercise at least the same degree of care to maintain the Information as the Company exercises in maintaining as secret and confidential its own intellectual property, confidential, and secret information, but always at least a reasonable degree of care;
 - d. Use the Information only for the above-stated purpose;
 - e. Restrict disclosure of the Information solely to those employees and sub-contractors of Company having a need to know such Information in order to accomplish the purpose stated above;
 - f. Advise each such employee or sub-contractor, before he or she receives access to the Information, of the obligations of Company and sub-contractor under this Agreement, and require each such employee or sub-contractor to maintain those obligations;

- g. Within fifteen (15) days following the request of County, return to County all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Information, or confirm to County, in writing, the destruction of such materials; and,
 - h. Immediately upon sale of Company or merger of Company with a third party, return to County all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Information or, in County's sole option and discretion, confirm to County, in writing, the destruction of such materials.
2. The Information shall remain the sole property of County.
3. COUNTY DOES NOT MAKE ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, COUNTY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. COUNTY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE INFORMATION BY THE COMPANY.
4. In the event of a breach or threatened breach or intended breach of this Agreement by Company, County, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach without requirement to post a bond.
5. The rights and obligations of the parties under this Agreement may not be sold, assigned or otherwise transferred, except to a successor-in-interest in connection with a merger, acquisition, or sale of all or substantially all its assets.
6. Company shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of Information in a manner not permitted by this Agreement, arising out of, or in connection with, performance of this Agreement by Company and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible indemnification for the County. Company shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Company is obligated to indemnify, defend, and hold harmless the County under this Agreement. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the County and Company.
7. For purposes of this Agreement, the following are designated as the parties' respective contacts and principal agents. Each party reserves the right to designate a different contact/agent upon giving written notice to the other party.

COUNTY	COMPANY
Alex Zheng, ITD Division Manager	Brian Nigg, P.E. / Project Manager
Contact Name / Title	Contact Name / Title
1590 Moffett St, Salinas, Ca 93905	5885 Meadows Road Suite 700, Lake Oswego, OR. 97035
Address	Address
831-759-6991	503-443-4455
Telephone	Telephone
Fax	Fax
ZhengA@co.monterey.ca.us	niggbj@bv.com
e-mail	e-mail

This Agreement is binding upon County and Company, and upon the directors, officers, employees and agents of each. This Agreement is effective as of the later date of execution and Company's obligations under this Agreement will continue indefinitely.

COUNTY OF MONTEREY		COMPANY	
By:	Contracts/Purchasing Manager		Black & Veatch Corporation
Date:			Company's Business Name*
By:		By:	
	Department Head (if applicable)		(Signature of Chair, President, or Vice-President) *
Date:	4-6-17	Name:	Chris Krafft
		Title:	Vice President
		Date:	2-14-17
By:	Information Technology Department Acknowledgement (if applicable)	By:	
			(Signature of Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer) *
Date:		Name:	Jeff Stamm
		Title:	Telecom Finance Officer
		Date:	2/14/17

***INSTRUCTIONS:** If Company is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If Company is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If Company is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.