

**AGREEMENT TO PROVIDE AASTRA TELEPHONE SYSTEM SERVICE  
FOR THE MONTEREY COUNTY INFORMATION TECHNOLOGY  
DEPARTMENT**

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 D & S COMMUNICATIONS, INC., hereinafter referred to as "CONTRACTOR."

**RECITALS**

- A. WHEREAS, County has invited proposals through the Request for Proposals (RFP #10267) for, in accordance with the specifications set forth in this AGREEMENT; and
- B. WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and
- C. WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

**1.0 PERFORMANCE OF THE AGREEMENT**

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP #10267 and in this AGREEMENT on the terms and conditions contained herein and in RFP #10267. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

RFP #10267 dated November 17, 2010,  
Addendum #1  
CONTRACTOR'S Proposal dated December 21, 2010, including all attachments  
and exhibits, to RFP #10267  
AGREEMENT  
Certificate of Insurance  
Additional Insured Endorsements

- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT, General Requirements and General Provisions, CONTRACTOR'S Proposal (with all

- 2.7.1 Additional on-site visits for additional service packs, if required by the County, shall be chargeable in accordance with EXHIBIT D – TIME & MATERIALS attached hereto.
- 2.8 CONTRACTOR shall not change administration passwords without County written approval.
- 2.9 CONTRACTOR shall provide technical assistance to support County owned Aastra Telephone Systems. These services shall include, but not be limited to:
  - 2.9.1 Access to CONTRACTOR's (800) support hotline
  - 2.9.2 Replacement of Aastra MD110 PBX hardware and all revisions
  - 2.9.3 Remote diagnostics
  - 2.9.4 Isolate source of problem
  - 2.9.5 Dispatch technician on-site within 4 hours upon request
  - 2.9.6 24/7 telephone support
  - 2.9.7 24/7 website reporting capabilities
  - 2.9.8 Manufacturer corrective software updates
  - 2.9.9 Remote software moves, add-ons and changes as requested at hourly bill rate
  - 2.9.10 Onsite coverage hours 7:00 AM – 7:00 PM PST, Monday through Friday, excluding County Holidays
  - 2.9.11 CONTRACTOR shall include digital phone repair at no additional charge.
- 2.10 Hardware Assurance Program shall include but is not be limited to:
  - 2.10.1 CONTRACTOR shall provide replacement for any board that fails within 24 hours or sooner.
  - 2.10.2 All related costs for replacement boards shall be included in the cost of the hardware assurance plan.
  - 2.10.3 CONTRACTOR shall retain extra critical boards for the County in order to limit downtime.
- 2.11 Service Pack Update Support
  - 2.11.1 CONTRACTOR shall provide labor and support to implement upgrades for County purchased software assurance that shall commence after the completion of the TSE upgrade.
  - 2.11.2 CONTRACTOR shall include at least two on-site visits per fiscal year to update the MD110 system to the latest Service pack including hot fixes and corrections.
- 2.12 The County shall provide CONTRACTOR with adequate remote IP access to each supported system.
- 2.13 CONTRACTOR shall provide an on-site courtesy visit once per quarter to review the switches to verify that they are running according to manufacturer specifications at no additional charge.
- 2.14 CONTRACTOR shall coordinate scheduled visits with the County.

**4.6 Tax:**

4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.

4.6.2 County is registered with the Internal Revenue Service, San Francisco office, registration number 94730022K. 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 Invoice amounts shall be billed directly to the ordering department.

5.2 CONTRACTOR shall reference the RFP/RFQ number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, 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 payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

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 via an Amendment.

## **6.0 INDEMNIFICATION**

CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.2.1.4 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 not less than \$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 at least three years following the expiration or earlier termination of this AGREEMENT.

### 7.3 Other Insurance Requirements:

- 7.3.1 All insurance required by this AGREEMENT shall be with a company 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 three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.3.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, 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.
- 7.3.3 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.
- 7.3.4 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

matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

## 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 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his 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 with his own organization or per a consortium.

during emergency situations. Delivery location(s) and estimated arrival will be mutually agreed upon, by County and CONTRACTOR, at time of order and will be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to CONTRACTOR's facility and/or equipment, will be taken into consideration.

## 15.0 BACKGROUND CHECKS

- 15.1 CONTRACTOR shall be required to submit appropriate State 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.
- 15.1.1 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.
- 15.1.2 CONTRACTOR is responsible for the cost of the State level criminal background check(s).
- 15.1.3 EXCEPTION: personnel who are designated to provide services at any of the Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office, at no cost to CONTRACTOR.
- 15.2 The required background checks SHALL be completed prior to allowing the personnel to work within any of the limited access facilities.

## 16.0 GUARANTEE OF MALWARE-FREE GOODS

All software/hardware purchased must be free of malicious code such as viruses, Trojan horse programs, worms, spyware, etc. Validation of this must be written into the contract. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spyware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spyware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers.

## 17.0 INTELLECTUAL PROPERTY RIGHTS

- 17.1 All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the

- 19.2 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.
- 19.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 19.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

\_\_\_\_\_  
Contracts/Purchasing Officer

By: \_\_\_\_\_  
Signature of Chair, President, or  
Vice-President

Dated: \_\_\_\_\_

Jason Kubasak, President  
Printed Name and Title

Approved as to Fiscal Provisions:  
[Signature]

Dated: 2/24/11

\_\_\_\_\_  
Auditor/Controller

By: Michael S. Bryniarski  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Dated: 2-28-11

MICHAEL S. BRYNIARSKI  
SECRETARY

RISK MANAGEMENT  
Approved as to Liability Provisions  
COUNTY OF MONTEREY  
APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE

\_\_\_\_\_  
Printed Name and Title

Risk Management

Dated: 2/24/2011

By: Dydia Schumaker  
Dated: Date: 5-2-11

Approved as to Form:

[Signature]  
Deputy County Counsel

Dated: 2-28-11

## EXHIBIT A - EXISTING INSTALLED AND STOCK PARTS

Board Type	Part Number
GJUL4	ROF1375393/1
TMU	ROF1375335/2
ELU28	ROF135334/3
ELU29	ROF1375339/14
TLU77/1	ROF1375387/1
LPU5	ROF1314602/3
LSU	ROF13714413/5
DSU	ROF1374414/4
ALU2	ROF1375373/1
BTU1	ROFU1310007/2
ELU30	ROF1375409/2
ELU24	ROFU1310021/1
TLU41	ROF1375381/1
GJUG5	ROF1375389/2
GSU	ROF1375390/1
GCU2	ROF13114493/2
GPU	ROF1375394/1
ELU32	ROF1375428/1
NIU/1	ROF1375396/1
NIU/2	ROF1375396/2
HDU5	ROF1375395/1
TLU82	ROF1375418/2
TLU80	ROF13754064
TLU77/3	ROF135387/3
TLU76/3	ROF1375338/3
TLU76/2	ROF1375338/2
SPAN CONVERTER	ROF1375399/1
IPLU	ROF1375067/1
ELU31	ROF1375412/1
ESU	1376301/1
LSU-E	ROF1376302/1



## EXHIBIT B – PRICING SHEET

<i>Service</i>	<i>Bid As:</i>	<i>Cost</i>
<b>MAIN SITE</b>		
<i>Technical Support Program</i>	<i>Annual Rate</i>	\$ 46,974
<i>Hardware Assurance Program</i>	<i>Annual Rate</i>	\$ 16,911
<i>Service Pack Program MD110</i>	<i>Annual Rate</i>	\$ 9,000
<i>Service Pack Program DNA</i>	<i>Annual Rate</i>	\$ 2,700
<i>Service Pack Program Solidus</i>	<i>Annual Rate</i>	\$ 4,500
<b>NATIVIDAD MEDICAL CENTER</b>		
<i>Technical Support Program</i>	<i>Annual Rate</i>	\$ 12,282
<i>Hardware Assurance Program</i>	<i>Annual Rate</i>	\$ 4,422
<i>Service Pack Program MD110</i>	<i>Annual Rate</i>	\$ 3,000
<i>Service Pack Program DNA</i>	<i>Annual Rate</i>	\$ 1,500
<i>Service Pack Program Solidus</i>	<i>Annual Rate</i>	\$ 1,500
<b>911 CENTER</b>		
<i>Technical Support Program</i>	<i>Annual Rate</i>	\$ 1,250

## EXHIBIT C –

### AASTRA ESCALATION TECHNICAL SUPPORT PRICING (ETS BASIC COVERAGE)

Site	Annual Price
<b>Main:</b>	
TSE	\$ 8,171.25
Solidus	\$ 3,985.59
DNA	not applicable
<b>NMC:</b>	
TSW	\$ 3,145.00
<b>911</b>	
TSW	\$ 625.00
<b>TOTAL</b>	<b>\$ 15,926.84</b>

## EXHIBIT D - TIME AND MATERIALS (T&M) RATES

TIME OF SERVICE*	CURRENT D&S REGULAR SERVICE RATES	CURRENT D&S SERVICE RATES FOR THE COUNTY UNDER MD110 TASP CONTRACT
Monday-Friday (7am – 7pm) Technical Assistance Center Technician	<del>\$150</del>	\$120
Monday - Saturday, Outside Principal Period	Time and one half <del>\$225</del>	Time and one half \$180
Sundays / D&S Holidays	Double Time <del>\$300</del>	Double Time \$240

1. The above time and materials rates are for telephone technical assistance outside the scope of AGREEMENT.
2. Remote: Minimum billing time for such services is 1 hour. Thereafter billing will be calculated in half-hour increments.
3. On-site: Minimum billing time for such services is 8 hours. Thereafter billing will be calculated in 1 hour increments. Travel & Living costs are not included in the above pricing.