

**AMENDMENT NO 2 TO PROFESSIONAL SERVICES AGREEMENT
COUNTY OF MONTEREY and D & S COMMUNICATIONS INC.**

THIS AMENDMENT to AGREEMENT #A-10267 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.

WHEREAS, the COUNTY invited proposals through Request for Proposals (RFP #10267) on November 17, 2010 for the provision of maintenance services and technical support for the Mitel phone system and,

WHEREAS, on December 21, 2010, the CONTRACTOR submitted a proposal in response to RFP #10267;

WHEREAS, on or about June 7, 2011 the COUNTY and CONTRACTOR entered into a contract for the services specified in RFP #10267;

WHEREAS, on or about April 16, 2013, the COUNTY and CONTRACTOR amended the contract to extend the contract term to April 30, 2015 and to increase the contract amount to \$501,775.91 to provide for additional maintenance and technical support services;

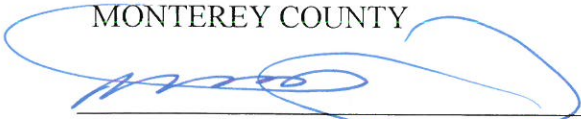
WHEREAS, COUNTY and CONTRACTOR wish to Amend Agreement #A-10267 to add **Main Phone System Software Assurance** and increase the total amount of the AGREEMENT to compensate for software upgrades and patches to the Main County telephone system, during the remaining term of the AGREEMENT.

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. Section 4.2.2 shall be amended to read the total AGREEMENT liability to the County shall not exceed ~~\$501,756.91~~ \$579,241.77 over the term of the AGREEMENT
2. EXHIBIT B-1, "Pricing Sheet" shall be removed
3. Exhibit B-2, "Pricing Sheet" shall be added to the AGREEMENT.
4. A copy of this AMENDMENT No. 2 shall be attached to the original AGREEMENT #A-10267, dated June 7, 2011.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY



Contracts/Purchasing Officer

Dated: 4-13-15

Approved as to Fiscal Provisions:



Deputy Auditor/Controller


Dated: 4-10-15

Approved as to Liability Provisions:

Risk Management

Dated:

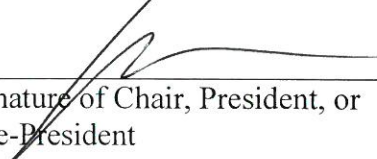
Approved as to Form:



Deputy County Counsel

Dated: April 9, 2015

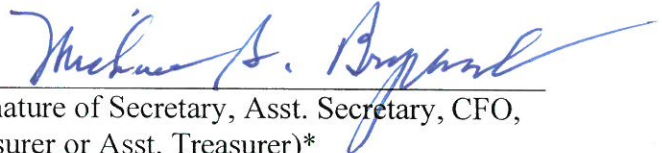
CONTRACTOR

By: 

Signature of Chair, President, or
Vice-President

JASON KUBASAK, CEO
Printed Name and Title

Dated: MARCH 27, 2015

By: 

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

MICHAEL S. BRYWARDT, SECRETARY
Printed Name and Title

Dated: MARCH 27, 2015

*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.

NOTE TO COUNTY STAFF: The revised Exhibit A1 needs to also be attached using the same footer and page numbering as in this Amendment

**EXHIBIT B-2
PRICING**

I. The hardware and software support will be provided in a two tier format. D&S will provide the technical and software support and will escalate the trouble to AASTRA as needed. The pricing table below identifies the cost of each of the categories for the two tier support.

Main Site	June 2011 - April 30 2012	May 1, 2012 - April 30, 2013	May 1, 2013 - April 30 2014	May 1, 2014 - April 30, 2015	Subtotals
Technical Assurance Support Program (TASP) (MX-ONE, Solidus)	\$ 46 974.00	\$ 46 974.00	\$ 46 648.35	\$ 47 822.70	
Hardware Assurance Program (HAP)	\$ 1 691 1.00	\$ 1 691 1.00	\$ 1 733 3.78	\$ 1 775 6.55	
Service Pack Program (SPP) MX-ONE			\$ 9 225.00	\$ 9 450.00	
Service Pack Program MDI IO	\$ 9 000.00	\$ 9 000.00			
Service Pack Program DNA	\$ 2,700.00	\$ 2 700.00			
SPP Solidus	\$ 4,500.00	\$ 4 500.00	\$ 4 612.50	\$ 4 725.00	
SPP Lab	\$ -	\$ -	\$ 1 496.50	\$ 1 533.00	
NMC					
Technical Support Program	\$ 12,282.00	\$ 12,282.00	\$ 12 589.05	\$ 12,896.00	
Hardware Assurance Program	\$ 4,422.00	\$ 4 422.00	\$ 4 532.55	\$ 4 643.10	
Service Pack Program MDI IO	\$ 3 000.00	\$ 3 000.00	\$ 3 075.00	\$ 3 150.00	
Service Pack Program DNA	\$ 1 500.00	\$ 1 500.00	\$ -	\$ -	
Service Pack Program Solidus	\$ 1,500.00	\$ 1 500.00	\$ 1,537.50	\$ 1,575.00	
911 Center					
Technical Support Program	\$ 1,250.00	\$ 1,250.00	\$ 1,281.25	\$ 1,312.50	
Subtotal Support	\$ 104,039.00	\$ 104,039.00	\$ 102,331.48	\$ 104,863.95	\$415,273.43
Aastra Technical Support (Basic Coverage)					
Main Phone System -TSE	\$ 8,171.25	\$ 8,171.25	\$ 8 293.20	\$ 4 146.60	
Main Phone System -Software Assurance	\$ 3 985.59	\$ 3 985.59	\$ -	\$ 77,484.86	*Escalation expires June 25, 2015
Main Phone System - Solidus	\$ 3 985.59	\$ 3 985.59	\$ -	\$ -	
TSE Lab	\$ -	\$ -	\$ 625.00	\$ 625.00	
911 -TSW	\$ 325.00	\$ 325.00	\$ 625.00	\$ 625.00	
NMC -TSW	\$ 3 145.00	\$ 3 145.00	\$ 3 145.00	\$ 3 145.00	
Total AASTRA Escalation	\$ 15 626.84	\$ 15,626.84	\$ 12,688.20	\$ 86,026.46	\$129,968.34
Travel	\$ 8 500.00	\$ 8 500.00	\$ 8 500.00	\$ 8 500.00	\$34,000
Subtotal Yearly	\$ 128,165.84	\$ 128,165.84	\$ 123,519.68	\$199,390.41	\$579,241.77

**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

attachments and exhibits), RFP #10267, Addendum, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 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.
- 1.4 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.
- 1.5 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.

2.0 SCOPE OF SERVICE

- 2.1 CONTRACTOR shall complete all phone system changes after normal business hours.
- 2.2 CONTRACTOR shall provide a single point of contact for technical support throughout this AGREEMENT.
- 2.3 CONTRACTOR shall have technicians available throughout the term of the AGREEMENT to County within four hours notice in the event of a major system outage.
- 2.4 CONTRACTOR shall pass on to the County the full warranty period given by the vendor.
 - 2.4.1 For refurbished equipment sold by CONTRACTOR to the County, the warranty period shall be 18 months from shipment date from CONTRACTOR.
- 2.5 CONTRACTOR shall provide all documentation and copies of any software installed at County sites.
- 2.6 Services shall be provided throughout the County.
 - 2.6.1 All technical assistance, hardware assurance or support shall include equipment, software or maintenance currently in use by the County.
 - 2.6.2 Service for the identified parts currently used by the County as listed in accordance with EXHIBIT A – EXISTING INSTALLED & STOCK PARTS attached hereto.
- 2.7 CONTRACTOR shall include 2 service pack upgrade visits per year.

- 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.

3.0 TERM OF AGREEMENT

- 3.1 The initial term shall commence with the signing of the AGREEMENT through and including September 13, 2013, with the option to extend the AGREEMENT for two additional one (1) year periods. County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions.
- 3.3 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

4.1 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the following pricing sheets attached hereto:
 - 4.1.1 EXHIBIT B - PRICING SHEET
 - 4.1.2 EXHIBIT C - AAastra ESCALATION TECHNICAL SUPPORT PRICING (ETS BASIC COVERAGE)
 - 4.1.3 EXHIBIT D - TIME & MATERIALS
 - 4.1.4 All prices quoted include the cost of work performed on weekends or after business hours.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
 - 4.2.1 The annual amount to be spent under this AGREEMENT shall not exceed \$128,470.
 - 4.2.2 The total AGREEMENT liability of the County shall not exceed \$385,410 over the term of the AGREEMENT.
- 4.3 CONTRACTOR shall initiate negotiations for rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
- 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:

- 4.6.1 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.

7.0 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 request 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.
- 7.1.3 Qualifying Insurers: All coverage's, 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.

7.2 Insurance Coverage Requirements:

- 7.2.1 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 minimum limits of liability:
- 7.2.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 7.2.1.2 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 not less than \$1,000,000 per occurrence.
- 7.2.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

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

insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. 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.

- 7.3.5 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 five 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 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this 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.
- 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. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, 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 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.

11.0 CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

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, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately 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 Project of 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 TRAVEL REIMBURSEMENT

Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

14.0 EMERGENCY SITUATIONS

- 14.1 CONTRACTOR shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency. During the emergency, CONTRACTOR shall provide County with all available supplies, materials, equipment and/or services on a priority basis.
- 14.2 County expects emergency deliveries to occur within 4 hours of order placement and may be required during evenings, weekends, and holidays. Time is of the essence for delivery

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

property of County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County.

- 17.2 Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

18.0 NOTICES

- 18.1 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 18.2 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 or faxed to the parties shall be addressed as follows:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
Email: DerrM@co.monterey.ca.us

D & S COMMUNICATINS, INC.
Manuel Taveira
1355 N. McLean Blvd.
Elgin, IL 60123
Tel. No.847-628+4173
FAX No.847-468-6068
Email: mtaveira@dscomm.com

19.0 LEGAL DISPUTES


- 19.1 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.

- 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

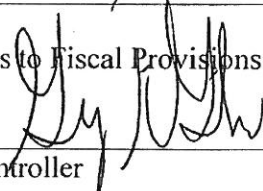
By: 

Signature of Chair, President, or
Vice-President

Dated: 6-7-11,

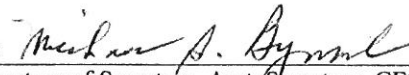
Jason Kubasch, President

Printed Name and Title

Approved as to Fiscal Provisions:


Dated: 2/24/11

Auditor/Controller

By: 

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

Dated: 2-28-11

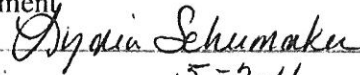
MICHAEL S. BRYNIARSKI
SECRETARY

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

Printed Name and Title

Risk Management

Dated: 2/24/2011

By: 
Date: 5-2-11

Approved as to Form:



Deputy County Counsel

Dated: 2-28-11

INTENTIONALLY LEFT BLANK

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

INTENTIONALLY LEFT BLANK

EXHIBIT B – PRICING SHEET

<i>Service</i>	<i>Bid As:</i>	<i>Cost</i>
MAIN SITE		
<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
NATIVIDAD MEDICAL CENTER		
<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
911 CENTER		
<i>Technical Support Program</i>	<i>Annual Rate</i>	\$ 1,250

EXHIBIT B – PRICING SHEET (cont'd)

<i>Estimated Travel Expense Should On-site Support be Required</i>		
<i>On-site Support</i>	<i>Annual Estimate</i>	\$ 8,500

EXHIBIT C –

AASTRA ESCALATION TECHNICAL SUPPORT PRICING (ETS BASIC COVERAGE)

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

INTENTIONALLY LEFT BLANK

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	\$150	\$120
Monday - Saturday, Outside Principal Period	Time and one half \$225	Time and one half \$180
Sundays / D&S Holidays	Double Time \$300	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.

**AMENDMENT # 1 TO AGREEMENT #A-10267
BETWEEN
THE COUNTY OF MONTEREY &
D&S COMMUNICATIONS, INC.**

This Amendment # 1 to AGREEMENT #A-10267 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**”.

WHEREAS, the COUNTY invited proposals through Request for Proposals (RFP #10267) on November 17, 2010 for the provision of maintenance services and technical support for the Ericsson phone system; and

WHEREAS, on December 21, 2010, the CONTRACTOR submitted a proposal in response to RFP #10267;

WHEREAS, on or about June 7, 2011 the COUNTY and CONTRACTOR entered into a contract for the services specified in RFP #10267;

WHEREAS, COUNTY and CONTRACTOR wish to amend AGREEMENT #A-10267 to extend the term and increase the total amount of the AGREEMENT to compensate maintenance and technical support services performed during the additional time period added to the AGREEMENT;


NOW THEREFORE, COUNTY and CONTRACTOR hereby agree to amend AGREEMENT #A-10267 as follows:

1. **Section 3.1, “TERM OF AGREEMENT.”** shall be amended to read, “The initial term shall commence with the signing of the AGREEMENT through and including ~~September 13, 2013~~ April 30, 2015”.
2. **Section 4.1,** shall be amended to read, “It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the following pricing sheets attached hereto:
4.1.1 ~~EXHIBIT B – PRICING SHEET~~
4.1.2 ~~EXHIBIT C – AASTRA ESCALATION TECHNICAL SUPPORT PRICING~~
~~(ETS BASIC COVERAGE)~~
4.1.1 EXHIBIT B1 – PRICING SHEET
4.1.3 EXHIBIT D – TIME & MATERIALS
4.1.42 All prices quoted include the cost of work performed on weekends or after business hours.
3. **Section 4.2.2,** shall be amended to read The total AGREEMENT liability of the County shall not exceed ~~\$385,410~~ \$501,756.91 over the term of the AGREEMENT.”
4. **Exhibit B, “Pricing Sheet”** shall be removed.

5. Exhibit C, "AASTRA Escalation Technical Support Pricing (ETS Basic Coverage)" shall be removed.
6. Exhibit B-1, "Pricing" shall be added to the Agreement.
7. A copy of this AMENDMENT No. 1 shall be attached to the original AGREEMENT #A-10267 dated June 7, 2011.

IN WITNESS WHEREOF, the parties have executed the AMENDMENT No. 1 as of the date set forth below their respective signatures.

COUNTY OF MONTEREY



 Contracts/Purchasing Officer

Dated: 4-16-13

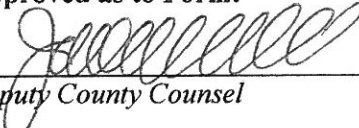
Approved as to Fiscal Provisions:



 Deputy Auditor/Controller

Dated: 4-12-13

Approved as to Form:



 Deputy County Counsel

Dated: 4-11-13

D&S COMMUNICATIONS, INC.

By: 

Signature of Chair, President, or
 Vice-President

Jason Kibusch, CEO + President
 Printed Name and Title

Dated: 5/27/13

By: 

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

MICHAEL S. BRYNIARSKI, VP-SECY
 Printed Name and Title

Dated: 3/27/2013

LOGGED

APR 15 2013

EXHIBIT B-1 PRICING

I. The hardware and software support will be provided in a two tier format. D&S will provide the technical and software support and will escalate the trouble to AASTRA as needed. The pricing table below identifies the cost of each of the categories for the two tier support.

Main Site	June 2011 - April 30, 2012	May 1, 2012 - April 30, 2013	May 1, 2013 - April 30, 2014	May 1, 2014 - April 30, 2015	Notation
Technical Assurance Support Program (TASP) (MX-ONE, Solidus)	\$ 46,974.00	\$ 46,974.00	\$ 46,648.35	\$ 47,822.70	
Hardware Assurance Program (HAP)	\$ 16,911.00	\$ 16,911.00	\$ 17,333.78	\$ 17,756.55	
Service Pack Program (SPP) MX-ONE			\$ 9,225.00	\$ 9,450.00	
Service Pack Program MD110	\$ 9,000.00	\$ 9,000.00			
Service Pack Program DNA	\$ 2,700.00	\$ 2,700.00			
SPP Solidus	\$ 4,500.00	\$ 4,500.00	\$ 4,612.50	\$ 4,725.00	
SPP Lab	\$ -	\$ -	\$ 1,496.50	\$ 1,533.00	
NMC					
Technical Support Program	\$ 12,282.00	\$ 12,282.00	\$ 12,589.05	\$ 12,896.10	
Hardware Assurance Program	\$ 4,422.00	\$ 4,422.00	\$ 4,532.55	\$ 4,643.10	
Service Pack Program MD110	\$ 3,000.00	\$ 3,000.00	\$ 3,075.00	\$ 3,150.00	
Service Pack Program DNA	\$ 1,500.00	\$ 1,500.00	\$ -	\$ -	
Service Pack Program Solidus	\$ 1,500.00	\$ 1,500.00	\$ 1,537.50	\$ 1,575.00	
911 Center					
Technical Support Program	\$ 1,250.00	\$ 1,250.00	\$ 1,281.25	\$ 1,312.50	
Subtotal support	\$ 104,039.00	\$ 104,039.00	\$ 102,331.48	\$ 104,863.95	
Aastra Escalation Technical Support (Basic Coverage)					
Main Phone System – TSE	\$ 8,171.25	\$ 8,171.25	\$ 8,293.20	\$ 4,146.60	*Escalation support expires Oct 14, 2014 to coincide with SWA expiration.
Main Phone System - Solidus	\$ 3,985.59	\$ 3,985.59	\$ -	\$ -	*Escalation expires June 25, 2015
TSE Lab	\$ -	\$ -	\$ 625.00	\$ 625.00	
911 – TSW	\$ 325.00	\$ 325.00	\$ 625.00	\$ 625.00	
NMC – TSW	\$ 3,145.00	\$ 3,145.00	\$ 3,145.00	\$ 3,145.00	
Total AASTRA Escalation	\$ 15,626.84	\$ 15,626.84	\$ 12,688.20	\$ 8,541.60	
Travel	\$ 8,500.00	\$ 8,500.00	\$ 8,500.00	\$ 8,500.00	
Subtotal Yearly	\$ 128,165.84	\$ 128,165.84	\$ 123,519.68	\$ 121,905.55	

Software Assurance (SWA) - The software expiration is listed on the table below:

Software Assurance (SWA)	Software Expiration
MX-ONE TSE main	Expires Oct 2014
MX-ONE TSE lab	Expires Dec 2014
Solidus	Expires June 2015

*The escalation to AASTRA will not be available after the date specified. D&S will continue to provide the first tier support.