

## AGREEMENT BETWEEN LASSEN COUNTY

AND

ZITO WEST HOLDING, LLC

**THIS AGREEMENT** is made between the COUNTY OF LASSEN, a political subdivision of the State of California (hereinafter "COUNTY"), and Zito West Holding, LLC, d.b.a Zito Business, with a principal place of business at 102 South Main Street, Coudersport, PA 16915 (hereinafter "CONTRACTOR").

This Agreement is made with reference to the following facts and circumstances:

**WHEREAS** COUNTY desires to lease two strands of dark fiber from CONTRACTOR between locations set forth on Attachment B to this Agreement (the "Services").

**WHEREAS** CONTRACTOR desires to provide ~~these~~ sServices.

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

### 1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A". CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A".

### 2. TERM.

The term of the agreement shall be for the period of July 18, 2023 through July 18, 2028.

### 3. PAYMENT.

COUNTY shall pay CONTRACTOR for Services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachments "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billing for said services to COUNTY in the manner specified in Attachment "B".

### 4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

COUNTY shall:

4.1 Pay the CONTRACTOR on the terms agreed upon herein in writing, provided

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that: (1) the CONTRACTOR timely submits appropriate invoices to the COUNTY, (2) the CONTRACTOR is not in breach of the terms and conditions of this Agreement, its attachments, or the standards or/specifications referenced or applicable thereto; (3) the CONTRACTOR is not in violation of laws or regulations substantially impairing the value of the CONTRACTOR'S performance or the CONTRACTOR'S entitlement to payment; (4) funds to be paid to the CONTRACTOR are not the subject of any active levy, execution, claim, offset, or stop notice by any third party or the COUNTY; and (5) appropriate public funds are available to the COUNTY for such payment.

4.2 Retain ownership and have prompt access to any report, evaluations, intellectual property, findings, or data assembled/developed by CONTRACTOR under this Agreement.

## **5. ADDITIONAL PROVISIONS.**

Those additional provisions unique to this Agreement are set forth in Attachment "C".

## **6. GENERAL PROVISIONS.**

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

## **7. DESIGNATED REPRESENTATIVES.**

Jason Housel is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. James Rigas is the authorized representative for CONTRACTOR. Changes in the designated representatives shall occur only by advance written notice to the other party.

## **8. ATTACHMENTS.**

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

Attachment A-Services  
Attachment B-Payment  
Attachment C-Additional Provisions  
Attachment D-General Provisions  
Attachment E-No Third Party Beneficiaries

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown opposite their respective signatures.

CONTRACTOR  
\*Zito West Holding, LLC  
d/b/a CONTRACTOR  
Business

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
James Rigas, Co-President  
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
\*

COUNTY  
County of  
COUNTY

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
\*

Approved as to form:

By: \_\_\_\_\_  
Amanda Uhrhammer  
COUNTY County Counsel

[1 Contract Standard Professional Services Master v20150602]

**ATTACHMENT A**  
**DARK FIBER AGREEMENT BETWEEN COUNTY**  
**COUNTY AND**  
**CONTRACTOR BUSINESS**  
**SCOPE OF SERVICES**

**A.1 SCOPE OF SERVICES**

WHEREAS, CONTRACTOR previously acquired the assets of Windjammer Communications LLC;

WHEREAS, among the assets acquired by CONTRACTOR were existing telecommunications contracts and agreements with COUNTY; and

WHEREAS, IRU Agreement dated 06/15/2016 between COUNTY and CONTRACTOR has expired.

CONTRACTOR shall lease to COUNTY and COUNTY accepts from CONTRACTOR an exclusive lease solely for authorized use of COUNTY two strands of dark fiber between locations set forth on Attachment B to this Agreement (the "Services").

CONTRACTOR shall be solely responsible to maintain the two strands of dark fiber related to the Services at all times, including without limitation, all splicing. COUNTY shall provide CONTRACTOR with reasonable access to COUNTY'S facilities for purposes of performing said maintenance. In the event of service outages, interruptions, malfunctions, or other technical problems or maintenance requests, CONTRACTOR shall be subject to the service levels and response times set forth in Exhibit C.

COUNTY shall solely be responsible, at its own expense, for the construction, installation, operation, maintenance, repair and any other activity engaged by or on behalf of COUNTY for all light communications transmission equipment and other terminal equipment and facilities required in connection with the use, electronics or signals of the strands of dark fiber related to the Services.

COUNTY, at its sole cost and expense, shall use the Services and (ii) conduct all work in connection with the Services in a safe condition and in a manner reasonably acceptable to CONTRACTOR, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect the CONTRACTOR or the facilities placed therein by CONTRACTOR.

COUNTY must obtain prior written authorization, which such authorization shall not be unreasonably withheld, conditioned or delayed, from CONTRACTOR approving any further work and the Party performing such work before COUNTY shall perform any work in or around the strands of dark fiber related to the Services.

In the event COUNTY receives information that the strands of dark related to the Services are damaged, it shall promptly notify CONTRACTOR of said damage by phone at 877 742-8272, CONTRACTOR's Network Operations Center. In the event CONTRACTOR receives information that COUNTY's facilities are damaged, CONTRACTOR will promptly notify COUNTY of said damage by phone at \_\_\_\_\_ for \_\_\_\_\_ or \_\_\_\_\_

\_\_\_\_\_ at \_\_\_\_\_. In each case, the caller shall provide the following information:

1. Name of entity making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Description of the problem in as much detail as possible.
5. Time and date the problem occurred or began.
6. Where CONTRACTOR is the reporting Party, a reasonable estimation of the severity of the problem and the impact on COUNTY'S Fiber Optic Facilities.

If CONTRACTOR intends to move, replace or change the location, alignment or grade of the strands of dark fiber related to the Services, CONTRACTOR shall promptly notify COUNTY thereof in writing.

**ATTACHMENT B**  
**AGREEMENT BETWEEN LASSEN**  
**COUNTY AND ZITO BUSINESS**

**PAYMENT**

COUNTY shall pay CONTRACTOR as follows:

The following table summarizes the monthly recurring fees by fiber segment. We have also included a Schedule for each dark fiber segment:

<u>Lassen County Locations (C-LSNCTY)</u>			
<u>Z:LOC</u>	<u>A:LOC</u>	<u>Name</u>	<u>MRC</u>
2610 Riverside Dr., Susanville, CA	2950 Riverside Dr., Susanville, CA	Lassen Public Defender/Probation	\$ 750.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	555 Hospital Lane, Susanville, CA	Lassen County Behavioral Health	\$ 700.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	707 Nevada St, Susanville, CA	Lassen County Planning & Building	\$ 700.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	221 S Roop St., Susanville, CA	Lassen County Administrative Services	\$ 700.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	1415 Sheriff Cady Lane, Susanville, CA	Lassen County Sheriff's Department	\$ 700.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	195 Russell Ave., Susanville, CA	Fairgrounds	\$ 700.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	2610 Riverside Dr., Susanville, CA	Lassen Superior Court	\$ 350.00
Zito Headend: 235 N Weatherlow St. Susanville, CA	1801 Main Street, Susanville, CA	Susanville Police Department	\$ 350.00
<b>Total MRC</b>			<b>\$4,950.00</b>

Payment Terms: Net 30 days

All payments not made when due shall bear a late payment charge of one and one-half (1 ½%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

**ATTACHMENT C**  
**AGREEMENT BETWEEN LASSEN COUNTY AND**  
**ZITO BUSINESS**

**ADDITIONAL PROVISIONS**

The strands of dark fiber related to the Services shall at all times remain the sole and exclusive property of CONTRACTOR and beneficial and legal title thereto shall be held by CONTRACTOR; and (b) neither the provision by CONTRACTOR of the Services hereunder, nor the payments by COUNTY contemplated hereby, shall create or vest in COUNTY any easement, interest, or any other ownership or property right of any nature in strands of dark fiber related to the Services. COUNTY shall not grant any security interest in strands of dark related to the Services or any other part or component thereof without CONTRACTOR's prior written consent.

**NETWORK OUTAGE DETECTION, DIAGNOSIS AND RESTORATION PROCEDURES (FIBER SLA)**

PURPOSE:

To ensure the rapid identification, diagnosis and repair or restoration of interruptions, outages, malfunctions or other technical problems associated with shared fiber optic system that is the subject of the IRU Agreement. Time is of the essence in all aspects of these Procedures. Cooperation between both COUNTY and CONTRACTOR personnel is essential to these Procedures.

OUTAGE RESPONSE:

In the event a network malfunction creating a service outage or interruption is detected (whether by the owner of the network or the non-owning Party), the owner of the network upon learning of such malfunction shall immediately take steps to correct such malfunction and notify appropriate personnel at the non-owning Party. Information about such malfunctions shall be communicated to the appropriate personnel of both the owner and the non-owning Party in order to: minimize risks to the personal safety of associates; ensure the deployment of adequate resources to quickly restore service; and prepare for response to questions to affected Parties such as customers, local franchise authorities, and news media.

FIBER OPTIC CABLE- EMERGENCY RESTORATION:

Purpose: To cooperatively facilitate the restoration of service to customers caused by broken or damaged fiber optic cable in the shortest time possible. Permanent restoration of network components shall be to as near original configuration as possible, utilizing accepted industry-standard engineering, construction and safety practices.

Requirements:

- COUNTY and CONTRACTOR shall both develop and provide to the other Party's Dispatch Center/NOC either in hard copy or network server folder access individual, network-specific Emergency Fiber Restoration information including: (1) important telephone numbers; (2) location(s) of

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restoration kits; (3) System Maintenance and Construction supervisor/lead's names; (4) pager lists; (5) contractor support contacts and numbers.

- COUNTY and CONTRACTOR shall both assemble and strategically deploy (which deployment shall include any applicable local code restrictions to reel storage) fiber-optics restoration kits to be immediately available to fiber outage response personnel.

- COUNTY and CONTRACTOR shall ensure that field technicians and other personnel shall be adequately trained to perform the functions required under these Procedures.

- COUNTY and CONTRACTOR shall ensure that field technicians shall have as-built fiber network maps, overlays and access to the databases necessary to perform the functions required under these procedures.

**Procedures:**

1. COUNTY or CONTRACTOR Network Operations Center (NOC) shall determine that an interruption or outage has occurred either;
  - a. Based on status monitoring
  - b. Or based on number and geography of calls by Call Center and/or NOC.
  - c. Or based on contract directly from CONTRACTOR or COUNTY personnel
2. CONTRACTOR shall determine the locations and/or links (transport/nodes) that are affected; from database.
3. Dispatch shall notify Headend and Construction/Fiber personnel. If detection occurs after hours, appropriate after-hours personnel shall be notified.
4. Headend and Construction/Fiber Technician shall be notified by dispatch and shall proceed to the Headend, TCC or Hub nearest the affected location(s).
5. At the Headend, TCC or Hub, technicians shall check the fiber interconnect receiver input.
6. After checking terminal end equipment, Rx and connections, technicians at the Headend, TCC or Hub shall conduct OTDR measurement of suspected fiber(s) and compare the results of this check against the applicable database.
7. If discontinuity is determined, Construction/Fiber Technician shall immediately proceed to the location of the break. At such location, it shall be determined if the fiber break is in COUNTY or CONTRACTOR territory and shall notify the appropriate contact at the other company of the location and nature of the break.
8. After notification of the other operator as specified in No. 7, the Construction/Fiber Technician shall commence site activity which shall include:

- Notifying Dispatch and providing Dispatch details of site-specific information.
- Requesting additional help, based on situation.
- Assuring security and safety of site for public.
- Performing traffic control as needed.
- Conducting notification, coordination and liaison activities as necessary with other utilities involved at site.
- Emergency restoration of fiber if possible, or assisting in permanent restoration if emergency restoration not possible once Construction/Fiber arrives (2-hour criteria).



## **ATTACHMENT D**

### **GENERAL PROVISIONS**

**D.1. INDEPENDENT CONTRACTOR.** For all purposes arising out of this Agreement, CONTRACTOR shall be: an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in California Government Code sections 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1.8. The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY any way without the written consent of the COUNTY.

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**D.2 LICENSES, PERMITS, ETC.** CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

**D.3 CHANGE IN STATUTES OR REGULATIONS.** If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

**D.4 TIME.** CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**D.5 INSURANCE.**

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage (hereinafter referred to as "the insurance") through and with an insurer acceptable to COUNTY. The insurance shall contain the following coverages:

D.5.1.1 Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

D.5.1.2 Comprehensive automobile liability insurance with minimum coverage of Five Hundred Thousand Dollars (\$500,000) per occurrence and with not less than Five Hundred Thousand Dollars (\$500,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

D.5.1.3 Workers' Compensation Insurance coverage for all of CONTRACTOR's employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the California Labor Code.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

D.5.4 Except for automobile liability insurance, the insurance shall name the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insureds and shall

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include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:

Jason Housel  
Information Services Supervisor  
County of COUNTY  
220 S. COUNTY St. Suite 1  
Susanville, CA 96130

Upon COUNTY's request, CONTRACTOR shall deliver certified copies of any insurance policies to COUNTY.

D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

D.5.8 COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

**D.6 INDEMNITY.**

COUNTY shall not be liable for, and CONTRACTOR shall defend and indemnify COUNTY and its officers, agents, employees, and volunteers (collectively "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics; liens or other liens, labor

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disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney's fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of CONTRACTOR or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive of County Parties. CONTRACTOR shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

**D.7 CONTRACTOR NOT AGENT.** Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

**D.8 ASSIGNMENT PROHIBITED.** CONTRACTOR may not assign any right or obligation pursuant to this Agreement without COUNTY County's prior approval, such approval shall not be unreasonably withheld. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

**D.9 PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

**D.10 STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

**D.11 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code section 107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

**D.12 TAXES.** CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

**D.13 TERMINATION.**

D.13.1 COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination,

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CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant this agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photocopying, photographing computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, pictures, sounds, or symbols, or combinations thereof.

**D.13.1.2** COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed fifty nine thousand four hundred dollars over the course of the County's fiscal year (7/1-6/30)

(\$59,400.00), excluding taxes, fees. Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

**D.14 OWNERSHIP OF INFORMATION.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

**D.15 WAIVER.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

**D.16 COMPLETENESS OF INSTRUMENT.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

**D.17 SUPERSEDES PRIOR AGREEMENTS.** It is the intention of the parties hereto that this Agreement

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shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

**D.18 ATTORNEY'S FEES.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

**D.19 MINOR AUDITOR REVISION.** In the event the COUNTY County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed one percent (1%) of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

**D.20 CAPTIONS.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**D.21 DEFINITIONS.** Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

**D.21.1 Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**D.21.2 Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

**D.22 TERM INCLUDES EXTENSIONS.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

**D.23 SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**D.24 MODIFICATION.** No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

**D.25 COUNTERPARTS.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**D.26 OTHER DOCUMENTS.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**D.27 PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or

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provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**D.28 VENUE.** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of COUNTY, State of California.

**D.29 CONTROLLING LAW.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**D.30 CALIFORNIA TORT CLAIMS ACT.** Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the Government Code, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under

the terms and conditions of this Agreement.

**D.31 TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and each covenant and term herein.

**D.32 AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

**D.33 CORPORATE AUTHORITY.** If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

**D.34 CONFLICT OF INTEREST.**

**D.34.1 Legal Compliance.** CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090 and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

**D.34.2 Advisement.** CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

**D.34.3 Admonition.** Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

**D.35 NONDISCRIMINATION.** During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of

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**www.CONTRACTORbusiness.com**

Chapter 5, 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. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

**D.36 JOINT AND SEVERAL LIABILITY.** If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

**D.37 TAXPAYER I.D. NUMBER.** The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer Identification Number or Social Security Number by providing COUNTY with a completed IRS Form W-9.

**D.38 NOTICES.** All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

Jason Housel  
County of COUNTY  
220 S. COUNTY St.  
Suite 1  
Susanville, CA 96130

If to "CONTRACTOR":

\_\_\_\_ County Initials

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**102 South Main**

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## **ATTACHMENT E**

### **NO THIRD-PARTY BENEFICIARIES**

This Agreement is made solely and specifically among and for the benefit of the parties to it, the COUNTY and the CONTRACTOR, and their respective successors and assigns, subject to the express provision of the agreement relating to successors and assigns, and no other person, has or will have any rights, interest, or claims under this Agreement as a third-party beneficiary or otherwise. This Agreement shall not establish any actionable duty of the County or County personnel inuring to any third party or to anyone claiming under or on behalf of such a third party.

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