

# Agenda



## County of Inyo Board of Supervisors

Board of Supervisors Room  
County Administrative Center  
224 North Edwards  
Independence, California

**NOTICE TO THE PUBLIC:** In order to minimize the spread of the COVID-19 virus, Governor Newsom has issued Executive Orders that temporarily suspend certain requirements of the Brown Act. Please be advised that the Board of Supervisors Chambers are closed to the public, and the Board will be conducting its meetings exclusively online. Board Members and Staff will participate via Zoom videoconference from individual, separate locations. The videoconference is accessible to the public at <https://zoom.us/j/868254781>. Individuals will be asked to provide their name and an email address in order to access the videoconference. Anyone who does not want to provide their email address may use the following generic, non-functioning address to gain access: [donotreply@inyocounty.us](mailto:donotreply@inyocounty.us).

Anyone wishing to make either a general public comment or a comment on a specific agenda item prior to the meeting, or as the item is being heard, may do so either in writing, or by utilizing the “**hand-waving**” feature when appropriate in the Zoom meeting (the Board Chair will call on those who wish to speak). Written public comment, limited to **250 words or less**, may be emailed to the Assistant Clerk of the Board at [boardclerk@inyocounty.us](mailto:boardclerk@inyocounty.us). Your emailed comments may or may not be read aloud, but all comments will be made a part of the record. Please make sure to submit a separate email for each item that you wish to comment upon.

**Public Notices:** (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

**Note:** Historically the Board does break for lunch; the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

### **August 4, 2020 – 10:00 AM**

1. **PLEDGE OF ALLEGIANCE** (Join meeting via Zoom [here](#))
2. **PUBLIC COMMENT**
3. **COUNTY DEPARTMENT REPORTS** (Reports limited to two minutes)
4. **COVID-19 STAFF UPDATE**

### **CONSENT AGENDA** (Approval recommended by the County Administrator)

5. **Clerk/Recorder** - Request Board approve payment to DFM Associates in an amount not to exceed \$14,700.40 for the annual DFM Associates Software License Maintenance and Support Fee, contingent upon the Board's adoption of the Fiscal Year 2020-2021 Budget.
6. **County Administrator - Risk Management** - Request Board: A) declare Heartsmart of New Milford, CT, the successful bidder for 20 automated external defibrillators (AEDs) and related equipment (15 wall cabinets, 1 trainer unit, and 5 travel cases) per Bid No. 2020-02; and B) authorize the purchase of up to 20 AEDs and related equipment (15 wall cabinets, 1 trainer unit, and 5 travel cases) from Heartsmart of

New Milford, CT, in an amount not to exceed \$24,833.26.

7. **Health & Human Services - First 5** - Request Board approve Amendment No. 1 to the contract between the County of Inyo and Northern Inyo Hospital, modifying the Schedule of Fees budget for Fiscal Year 2020-2021, and authorize the Chairperson to sign.

**DEPARTMENTAL** (To be considered at the Board's convenience)

8. **Planning Department** - Request Board receive a presentation from staff regarding the Bureau of Land Management's (BLM) Alabama Hills Management Plan Environmental Assessment (EA) and a draft comment letter; provide comments; and potentially authorize the Chairperson to sign and direct staff to submit the comment letter.
9. **County Administrator - Information Services** - Request Board ratify and approve the Enterprise Enrollment Agreement between the County of Inyo and Microsoft of Redmond, WA, through their licensing solutions partner Dell, Inc. of Round Rock, TX, for the provision of Microsoft product subscription services in an amount not to exceed \$465,000 for the period of July 1, 2020 through June 30, 2023 (\$155,000 per year for 3 years), contingent upon the Board's approval of future budgets, and authorize the Information Services Director to sign, contingent upon all appropriate signatures being obtained.
10. **County Administrator - Information Services** - Request Board waive competitive bidding and then ratify and approve the Service Agreement between the County of Inyo and Granite Communications of Quincy, MA, under the California Multiple Award Schedule No. 3-19-70-3749A, for the provision of SIP Trunk telecommunications and long-distance services in an amount not to exceed \$91,440 plus long distance charges, paid monthly at \$2,940 plus long distance charges, for the period of July 1, 2020 through June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the Information Services Director or the Deputy Information Services Director to sign, contingent upon all appropriate signatures being obtained.
11. **County Administrator - Personnel** - Request Board approve the personal services contract with Jerry Oser as the Deputy Environmental Health Director, at \$7,677 per month effective August 6, 2020, and authorize the County Administrator to sign.
12. **Clerk of the Board** - Request Board approve the minutes of the regular Board of Supervisors meeting of July 28, 2020.

**COMMENT** (Portion of the Agenda when the Board takes comment from the public and County staff)

13. ***PUBLIC COMMENT***

**BOARD MEMBERS AND STAFF REPORTS**



# County of Inyo



## Clerk/Recorder

### CONSENT - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Kammi Foote

**SUBJECT:** Approval of annual payment to DFM Associates for Software License Maintenance and Support Fee

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**RECOMMENDED ACTION:**

Request Board approve payment to DFM Associates in an amount not to exceed \$14,700.40 for the annual DFM Associates Software License Maintenance and Support Fee, contingent upon the Board's adoption of the Fiscal Year 2020-2021 Budget.

**SUMMARY/JUSTIFICATION:**

On April 24, 2007 the Inyo County Board of Supervisors declared DFM Associates as the sole source provider for voter registration software and approved a contract between the County of Inyo and DFM Associates for use of their EMS voter registration system. Per the Board approved contract, the initial term of the lease was "Sixty (60) months from the installation of the EIMS and continuing thereafter until the next following June 30th. The entire amount to fulfill the financial obligations under the initial lease terms of the contract was encumbered in the 2007-2008 fiscal year. Payments were made to DFM Associates monthly from July 1, 2007 to June 30, 2012.

According to the Article 9 of the contract, "After the expiration of the initial term, this Agreement will automatically continue with respect to such Specified DFM Software or such Specified Consulting Services on a year to year basis, unless either party gives the other written notice..."

This request is to authorize an annual payment in the amount of \$14,700.00 to continue the lease with DFM Associates for the term of July 1, 2020 – June 30, 2021.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

On April 24, 2007 the Inyo County Board of Supervisors declared DFM Associates as the sole source provider for voter registration software and approved a contract between the County of Inyo and DFM Associates for use of their EMS voter registration system. Per the Board approved contract, the initial term of the lease was "Sixty (60) months from the installation of the EIMS and continuing thereafter until the next following June 30th. The entire amount to fulfill the financial obligations under the initial lease terms of the contract was encumbered in the 2007-2008 fiscal year. Payments were made to DFM Associates monthly from July 1, 2007 to June 30, 2012.

According to the Article 9 of the contract, "After the expiration of the initial term, this Agreement will automatically continue with respect to such Specified DFM Software or such Specified Consulting Services on a year to year basis, unless either party gives the other written notice..."

This request is to authorize an annual payment in the amount of \$14,700.00 to continue the lease with DFM Associates for the term of July 1, 2020 – June 30, 2021.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The DFM software system is used to electronically manage voter registration and election administration in Inyo County. The Board can deny the approval of this payment, which would result in the discontinuation of the use of the EIMS Voter Registration and Elections Management System and the inability to electronically manage election related services as required by State and Federal law.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

This annual payment will be made from the Elections Budget – General Operating Expenses (011000-5311), contingent upon the adoption of the 2020-2021 budget.

**ATTACHMENTS:**

1. DFM Annual Payment 2020-2021
2. DFM Sole-Source Form & Master Contract

**APPROVALS:**

Michele Hartshorn	Created/Initiated - 7/20/2020
Kammi Foote	Approved - 7/20/2020
Darcy Ellis	Approved - 7/21/2020
Michele Hartshorn	Approved - 7/21/2020
Marshall Rudolph	Approved - 7/21/2020
Amy Shepherd	Final Approval - 7/28/2020

**DFM Associates**10 Chrysler, Suite A  
Irvine, CA 92618

949-859-8700

949-859-9512 Fax #

**Invoice**

Date	Invoice #
7/1/2020	45776

**Bill To**County of Inyo  
Kammi Foote, County-Clerk-Recorder  
P.O. Drawer F  
Independence, CA 93526**Ship To**

P.O. Number		Terms	Ship		S.O. No.
Contract 4/27/07		Net 30			
Quantity	Item Code	Description	U/M	Price Each	Amount
12	CA - Inyo	EIMS Lease		1,225.00	14,700.00
		Per Increase Letter Dated April 1, 2020			
		Annual Invoice: For the Months of July 2020 - June 2021			
		Non Taxable Sales		0.00%	0.00
				<b>Total</b>	\$14,700.00

## Sole Source Justification Form

**Sole Source:** Is awarded for a commodity or services, which can only be purchased from one supplier, usually because of its specific technological requirements, availability or unique patented manufacture. The lack of planning is not an overriding circumstance.

**This is a sole source because:**

- There is only one known source because:
- This is a sole provider of a licensed, copyrighted, or patented good or service.
- X This is a sole provider of items compatible with existing equipment or systems.
- This is a sole provider of factory-authorized warranty service.
- This is a sole provider of goods or services that perform the intended function or meet the specialized needs of the County (Please detail in an attachment).
- The requested product is used or demonstration equipment available at a lower – than-new-cost.
- One source is the only practical way to respond to overriding circumstances that make compliance with competitive procedures under the Authority's policies not in the best interest of the Authority (Please detail in an attachment).

**Please attach a memorandum to explain why the goods or services are not available elsewhere, include names and phone numbers of firms contacted.**

- Other brands/manufacturers considered
- Other suppliers considered
- Other (i.e., emergency)

**Describe the item or service, its function and the total cost estimate (if practical, separate labor and materials) in the space below or in a separate attached label:**

**Description of Item or Service.**

Please see attached exhibit "A"

DEPARTMENT CONTACT PERSON & TITLE Kammi Foote	
DEPARTMENT NAME Elections	PHONE 760-878-0224
REQUESTED SUPPLIER/CONSULTANT NAME DFM Associates	SUPPLIER CONTACT PERSON Jeff Diebolt
SUPPLIER ADDRESS 10 Chrysler # A, Irvine, CA 92618	SUPPLIER CONTACT'S PHONE NUMBER <u>(949) 859-8700</u>

The County's Purchasing Policy Manual Section III.(E), Exceptions to the Competitive Process/Sole Source and Section IV.(I), Sole Source Requests for Independent Contractors, describe when sole sourcing is permitted. By signing below, Requestor acknowledges that he/she has read and understands the County's policy on sole source procurements



\_\_\_\_\_  
*Signature of Requestor*



\_\_\_\_\_  
*Date*

Exhibit "A"

On April 24, 2007 the Inyo County Board of Supervisors declared DFM Associates as the sole source provider for voter registration software and approved a contract between the County of Inyo and DFM Associates for use of their EMS voter registration system. Per the Board approved contract, the initial term of the lease was "Sixty (60) months from the installation of the EIMS and continuing thereafter until the next following June 30<sup>th</sup>.

According to the Article 9 of the contract, "After the expiration of the initial term, this Agreement will automatically continue with respect to such Specified DFM Software or such Specified Consulting Services on a year to year basis, unless either party gives the other written notice..." Sole-source is justified for this software for the following reasons:

1. A substantial amount of funds, time and energy has been invested in training to use the system. There would be a significant cost associated with training staff on a new system to perform a majority of functions within the Department.
2. DFM is one of only two voter registration systems certified for use with VoteCal – the California Statewide database, which we are currently in the process of fully implementing.
3. The current software system works well for the department, has excellent support and is well suited to our needs.



*In the Rooms of the Board of Supervisors*

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 24<sup>th</sup> day of *APRIL, 2007* an order was duly made and entered as follows:

Clerk-Recorder/  
New Voter  
Registration  
System

Ms. Mary Roper, Clerk-Recorder, explained that Sequoia Voting Systems notified the County that they would no-longer be supporting their Voter Registration System, which was the impetus for the County having to identify another vendor. She informed the Board that Sequoia Voting Systems had been purchased by a Venezuelan Company, that they were in the process of divesting themselves of Sequoia, and that Sequoia is still supporting the computer voter system. Ms. Roper, explained that since the new vendor, DFM Associates is a California Company that she as a level of comfort with their ability to support this system. Moved by Supervisor Cash and seconded by Supervisor Arcularius to A) declare DFM Associates the sole source provider of voter registration systems for the Clerk-Recorder; B) approve the Contract between the County of Inyo and DFM Associates for (a) the purchase of the EIMS voter registration system in an amount not to exceed \$44,000, (b) the payment of the annual license fee in the amount of \$600 beginning with FY 2007-08 and each year for the term of the lease, and (c) the \$1,000 per month lease fee for the term of the agreement, contingent upon the Board's adoption of future budgets; and C) authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained. Motion carried unanimously.

WITNESS my hand and the seal of said Board this 24<sup>th</sup>

Days of APRIL 2007



RONALD JULIFF  
Clerk of the Board of Supervisors

By

*Patricia Gunsolley*  
Patricia Gunsolley, Assistant

Routing
CC _____
Purchasing _____
Personnel _____
Auditor _____
CAO _____
Other <u>Clerk-Recorder</u> _____
DATE: May 2, 2007

**DFM ASSOCIATES**  
**MASTER AGREEMENT**  
**INYO COUNTY**

THIS MASTER AGREEMENT ("Agreement") is made and entered into as of April 24, 2007 by and between DFM ASSOCIATES, a California corporation ("DFM"), and THE COUNTY OF INYO, a political subdivision of the State of California ("County").

**RECITALS**

A. DFM is willing to do any or all of the following at the request of the County:

- (1) To purchase and resell Computer Hardware to the County;
- (2) To lease or license DFM Software to the County;
- (3) To lease or sublicense Third Party Software to the County; and/or
- (4) To provide Consulting Services to the County.

B. The purpose of this Agreement is to generally describe the various products and services DFM is willing to provide to the County if and when the County chooses to utilize them, and to establish the basic contractual terms and conditions under which those products and/or services will be provided, subject to additional terms and provisions set forth in a separate Addendum which will specify the product or service and the particular terms and provisions applicable thereto. The separate Addendum will become a part of this Agreement, if and when it has been signed on behalf of both the County and DFM. Neither DFM nor the County is obligated to the other regarding any of the products or services generally described herein unless and until, and then only to the extent that, the specific product or service is identified on a separate Addendum attached hereto and signed on behalf of both parties.

## TERMS AND CONDITIONS

NOW, THEREFORE, the parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following definitions, which incorporate by reference the standard definitions of the computer industry established by trade usage or custom to the extent such standard definitions do not contradict specific definitions set forth herein:

Addendum/Addenda refers to any addendum signed by the parties hereto at any time or from time to time referring to this Agreement which specifically identifies the product or service to be provided by DFM to the County and the price, payment terms and other applicable information related thereto.

Computer Hardware refers to any computer, whether a main frame, mini-computer, personal computer or file server, and related computer peripheral equipment and accessories.

Computer Hardware Vendor refers to the corporation or other entity which manufactures or supplies the Computer Hardware.

Consulting Services refers to any or all of the services which DFM is capable of and willing to provide to the County, including consultation with the County regarding its data processing and information systems.

DFM Software refers to and includes any or all software systems developed by DFM, which DFM is willing to provide to the County.

File Maintenance refers to the ability to update a database.

Initial Installation Fee refers to the fee to be paid by the County to DFM for the initial installation of any Specified DFM Software and/or any Specified Computer Hardware.

Lease Term refers to the term of the lease between the County and DFM regarding the County's right to use any DFM Software and/or to utilize any Consulting Services. The initial Lease Term will be set forth on the Addendum and will be extended automatically pursuant to the terms of this Agreement.

Manuals refers to any documents, reports, instructions or writings, and any annotations thereto, that explain or depict, generally or in detail, any aspect of any particular DFM Software, including but not limited to, all procedures and workings thereof, and the Manuals may be on any format, including hard copy, on disk or on CD-ROM or any other media.

Monthly Fee refers to the monthly charge by DFM to the County for the right of the County to use any Specified DFM Software or to utilize any Specified Consulting Service.

Programs refers to all programs, sets of instructions and statements to be used directly or indirectly on the Computer Hardware to facilitate, directly or indirectly, the use(s), maintenance or enhancement of any particular DFM Software.

Software Enhancement refers to the addition of a new DFM Software Subsystem or the revision of any existing Subsystem for any particular DFM Software.

Software Maintenance refers to the maintenance of the Programs and the resolution of any problems with respect to any Programs concerning internal coding and operation thereof. The term Software Maintenance is meant to include those modifications, additions and revisions of any particular DFM Software mandated by new legislative enactments.

Software Release refers to the most recent revision of any particular DFM Software.

Specified Consulting Service refers to any particular Consulting Service identified on an Addendum attached hereto and signed on behalf of the County and DFM.

Specified DFM Software refers to any particular DFM Software identified on an Addendum attached hereto and signed on behalf of the County and DFM.

Specified Operating System Software refers to the operating system software provided by a third party vendor for the Computer Hardware used by the County on which the Specified DFM Software will operate.

Subsystem refers to any portion of any particular DFM Software which is related to a specific functional area within the department of the County which is using the Specified DFM Software pursuant to this Agreement.

Third Party Software refers to any software, the rights of which are owned or held by an corporation or entity other than DFM.

**EIMS for Windows  
Hardware Configuration**

**Hardware Addendum**

Part Number	Description	Quantity	Price	Ext Price
231292608	<b>EIMS for Windows Data and Application Server</b>	1	4,767.00	4,767.00
	PowerEdge 860 Intel® Dual Core Xeon™ processor at 2.4GHz	1		
	Operating System: Windows 2003 Server, Standard Edition with 5 Client Licenses	1		
	2GB DDR2 533MHz (4X512MB), Single Ranked DIMMs	1		
	2 x 169GB 7.2K RPM SATA HDD	1		
	No Floppy Drive	1		
	Dual On-Board NICs	1		
	48X IDE CD-RW/DVD	1		
	5 Additional CALs for Windows 2003 Server (Standard or Enterprise)	1		
	Electronic Documentation and OpenManage CD Kit	1		
	Basic Support	1		
	OG SQL Svr 2005 Std Ed	1		
	SQL Svr Media	10		
	OG SQL Svr 2005 CAL	10	66.26	662.60
Wdws Terminal Svr CAL 2k3 Eng OLP NL Loc	1	189.26	189.26	
MST-R19-00191 WRPRC010 22001979	Business Objects Crystal Reports V10 Standard	1	285.99	285.99
	Adobe Acrobat 8.0 Standard - Windows Edition			
bcpwdet	<b>EIMS for Windows ScanStations</b>	1	1,115.00	1,115.00
	OptiPlex 320 MiniTower Intel® Pentium® 4 Processor	1	6.12	6.12
	USB Cable	1	600.00	600.00
	Scanning Software License (LeadTools - Req'd)	1	3,499.99	3,499.99
DFM-LTJc PA03277	Fujitsu 4340C Scanner			
LZ310-WDP	<b>EIMS for Windows Printers &amp; Barcode Readers</b>	3	599.00	1,797.00
	Worthington Laser Scanner (Barcode Reader)	3	129.99	389.97
	Dymo Labelwriter 400 Turbo USB			
				13,312.93
Total Hardware and 3rd Party (non-DFM) Software Costs				6,000.00
Hardware Configuration, procurement & Installation Fee (Note 3)				20,000.00
Data Conversion/EIMS Software Installation/Training				7.75%
Sales Tax				3,046.75
Estimates Shipping (Allowance)				500.00
<b>Grand Total</b>				<b>42,859.68</b>
				1000.00
Monthly Lease Fee				
Semaphore Corp ZP4 Address Standardization Software (Subscription)				1 800.00 Annual

**NOTES:**

- (1) Hardware costs are estimates based on current pricing
- (2) Network Hardware (hubs/switches/wiring) to be supplied by the county
- (3) This fee is not charged if the county purchases hardware direct and installs hardware

## EIMS™ for Windows SOFTWARE ADDENDUM

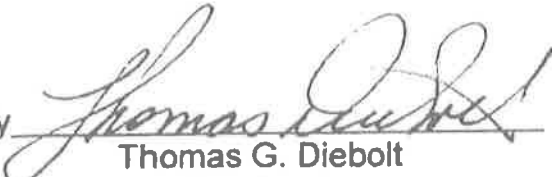
WHEN SIGNED ON BEHALF OF THE COUNTY AND DFM  
THIS ADDENDUM SHALL BECOME A PART OF THAT  
CERTAIN MASTER AGREEMENT, DATED AS OF \_\_\_\_\_, 2007  
("MASTER AGREEMENT")

EIMS™ is an acronym for Election Information Management System and means the computer software designed by DFM for use in the various processes used to register and manage voters, election officials and polling places as well as the election process itself. EIMS™ includes the EIMS™ Software, the EIMS™ Subsystems, any EIMS™ Enhancement and any EIMS™ Software Releases. EIMS™ is proprietary to DFM and reference is made to Article 6 of the Agreement.


- 10 Core Function: The core function of the EIMS™ is to gather and maintain data for use in the process of registering voters and the processing of elections. The ability of the EIMS™ to perform the core functions is dependent upon, among other things, all of the following: (1) accuracy and completeness of the County's Data; and (2) continual verification by the County of the accuracy and completeness of the County's Data.
- 20 Description of EIMS™: EIMS™ is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- 30 Installation: The DFM Software shall be deemed to have been installed when the County is able to perform daily routine maintenance of the Voter File, the Precinct District File and the Street Guide.
- 40 Initial Installation and Data Conversion Fee: \$20,000.
- 41 LeadTools Image License: \$600.
- 50 Initial Monthly Fee: \$1000.00.
- 60 Initial Lease Term: Sixty (60) months from the installation of the EIMS™ and continuing thereafter until the next following June 30th (subject to extension as provided in Article 9 of the Master Agreement).

70 Incorporation of Master Agreement. The provisions of the Master Agreement, including, without limitation, Article 3, are incorporated herein by this reference as if set forth in full.

DFM ASSOCIATES, a California Corporation

By   
Thomas G. Diebolt  
President

COUNTY OF INYO, a political subdivision of the State of California

By   
Chairperson  
Its Board of Supervisors

## EXHIBIT A

EIMS® for Windows includes the following functional Modules:

### Precinct/District

Create and maintain precincts, districts and the relationship between those entities.

### Street Guide

Create and maintain street segments and their relationship to precincts.

### Office/Incumbent

Create and maintain office types, office definitions, and incumbent data.

### Voters

Create and maintain voter registration records. Allows for maintaining active, canceled and inactive voter records. Provides duplicate checking, customer tape generation, and other reporting features.

### Affidavit Tracking

Maintains records of affidavits provided to third parties and tracks those subsequently returned.

### Officers/Polling Places

Maintain records of polling places, election officers and election night workers.  
Maintain history.

### Election Workspace

Manage Election definitions including contests, candidates and measures. Provides Ballot typing, consolidation, election officer and polling place management for the election. Produce election related mailings and reports. Manage Absentee/Mailed ballot voters.



**Petition Checking**

Manage petition information, define new petitions, select random sample, provides system directed signature checking.

**Resources**

Manage county specific information and options.

Third Party Software Vendor refers to any corporation or other entity which has authorized DFM as a reseller or grants DFM the right to use and/or sublicense its software or which licenses the County directly to use its software.

## ARTICLE 2. COMPUTER HARDWARE

All of the following provisions of this Article 2 shall apply to the purchase of any Computer Hardware by the County through DFM unless expressly modified or supplemented by the Computer Hardware Purchase Addendum.

2.1 Computer Hardware Purchase Addendum. DFM agrees to supply to the County the Computer Hardware identified on a Computer Hardware Purchase Addendum attached hereto. The County agrees to pay DFM, to the extent DFM is supplying the Computer Hardware, the purchase price therefore and to perform all other obligations required of it herein, all upon the terms and subject to the conditions set forth on the Computer Hardware Purchase Addendum.

2.2 Sales and Use Taxes. The County shall be responsible for paying, and shall pay, all sales and use taxes applicable to any items included as part of the Computer Hardware which is sold or resold to it by DFM. If the County advises DFM that no sales or use taxes are due or collectible, then the County shall indemnify, defend, protect and hold DFM harmless from and with respect to any claim related to the collection, payment or reporting of such sales or use taxes, including all penalties and interest thereon or as a result of the non-payment thereof or the failure to file any return required to be filed, and any attorneys' fees incurred by DFM in enforcing its indemnity rights hereunder or in defending any claim to collect or pay such sales or use taxes.

2.3 Delivery and Insurance. The County shall be responsible for paying, and shall pay, all insurance and delivery charges relative to the delivery of the Computer Hardware to its final location at the installation address. DFM agrees to set forth on the Computer Hardware Addendum the estimated cost of, or "not to exceed amounts" regarding, insurance and delivery charges payable by the County.

2.4 Security Interest. The County grants DFM a security interest in all items of the Computer Hardware identified on the Computer Hardware Purchase Addendum as collateral for the obligation of the County to pay DFM for the full purchase price therefore. The County agrees to sign, when and where appropriate, any financing statements (i.e., UCC-

1 forms) and other documents as may be required to perfect the security interest of DFM in such collateral. DFM agrees to release its security interest in the collateral as soon as the purchase price therefore has been paid in full.

2.5 Risk of Loss. From and after the date upon which each item of hardware is delivered with inside delivery, to the installation address, the County shall assume all risk of loss and risk of damage with respect thereto.

2.6 Transfer of Warranties. DFM agrees to provide on the DFM Computer Hardware Addendum a statement regarding the duration of the warranty from the Third Party Computer Vendor with respect to each item of Computer Hardware for which there is a warranty of at least one (1) year or more. DFM agrees to transfer and assign to the County all warranties it receives or is entitled to from any Computer Hardware Vendor whose Computer Hardware has been resold by DFM to the County.

2.7 Site Preparation, Etc. The County shall be solely responsible for, and shall pay all costs associated with, preparation of the site where the Computer Hardware is to be delivered, including all alterations and installations required in order to comply with all installation, operating and site specifications of the Computer Hardware Vendor. DFM agrees to deliver to the County copies of the Computer Hardware Vendor's site specifications for any Computer Hardware ordered by the County pursuant to this Agreement. All site preparation shall be completed on or before the scheduled delivery date of the Computer Hardware.

2.8 Cancellations and/or Delays. If the County cancels or terminates its obligation to purchase any Computer Hardware for any reason, or if the County is unable to take delivery of any Computer Hardware on a timely basis, then, and in such event, the County shall be liable for and agrees to pay on behalf of DFM any cancellation charges, late charges, restocking charges, liquidated damages or any other costs or expenses which DFM incurs to the Computer Hardware Vendor as a result thereof. Nothing contained in this Section is intended to imply that the County has any right to cancel this Agreement except as otherwise expressly provided in this Agreement.

2.9 Installation of Computer Hardware. Unless otherwise stated on the computer Hardware Purchase Addendum or on any Consulting Services Addendum, the County shall be solely responsible for, and shall pay all costs associated with, the installation of the Computer Hardware and the installation of any Third Party Software and the integration and connection of the Computer Hardware with any other computer equipment and/or software owned, leased, licensed, sublicensed, used or operated by the County.

ARTICLE 3.  
RIGHT TO USE DFM SOFTWARE

All of the following provisions of this Article 3 shall apply to the lease of any Specified DFM Software by the County from DFM unless expressly modified or supplemented by the DFM Software Addendum.

3.1 DFM Software Addendum. DFM agrees to lease to the County, on a non-exclusive basis, the DFM Software identified on a DFM Software Addendum. The Specified DFM Software and all prices and payment terms with respect thereto shall be set forth on the DFM Software Addendum except to the extent any such provisions are covered by Article 3 or elsewhere in this Agreement. The County shall have no right to use any DFM Software unless and until the DFM Software Addendum has been signed on behalf of the County and DFM, and then, in such event, the County's rights are limited to the use and/or lease of the Specified DFM Software on the terms set forth herein and therein. The County's rights to use any Specified DFM Software are governed and restricted by the terms of this Agreement.

3.2 Installation of the Specified DFM Software. On or before the installation date set forth on the DFM Software Addendum, or as soon thereafter as is reasonably practicable, DFM shall install the DFM Software. The DFM Software shall be deemed to have been installed when the County is able to log into the EIMS and perform maintenance and look-up functions on its core databases.

3.3 Initial Installation Fee. The initial installation fee for any Specified DFM Software will be set forth on the DFM Software Addendum. The County agrees to pay the initial installation fee to DFM upon installation of the Specified DFM Software.

3.4 Monthly Fee. The initial Monthly Fee for the right to use any Specified DFM Software will be set forth on the DFM Software Addendum applicable thereto. As consideration for the non-exclusive right to use the Specified DFM Software, the County agrees to pay DFM the Monthly Fee within thirty (30) days after receipt of a correct invoice. Unless otherwise provided on the DFM Software Addendum, the Monthly Fee for the first full month of any Lease Term shall be paid at the time any Specified DFM Software has been installed. If any rental payment date falls on a day of the month other than the first day of such month, or if any rental payment is for a period which is shorter than one month, the rental for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to one-thirtieth (1/30) of the then current Monthly Fee. DFM reserves the right to increase the Monthly Fee, by an amount not to exceed seven percent (7%) per

annum, as of July 1st of each year of the Lease Term upon ninety (90) days prior written notice to the County.

3.5 Right to Use the Specified DFM Software. DFM grants to the County the nonexclusive right to lease and use the Specified DFM Software on the terms and subject to the conditions set forth in this Agreement. The County's right to use and lease any Specified DFM Software specifically excludes the right to sublicense, assign, sublease or otherwise transfer the Specified DFM Software and/or any of the County's rights hereunder or therein.

3.6 DFM Software Releases. DFM shall provide the County with all Software Releases for the Specified DFM Software within one hundred twenty (120) days after the new Software Release becomes generally available to other DFM customers. The cost of the Software Releases is included in the Monthly Fee. Installation of the DFM Software Releases will be coordinated by DFM and a designated representative of the County.

3.7 Authorized Maintenance. All Software Maintenance, Software Enhancements and Software Releases shall be provided and installed by employees or authorized agents of DFM.

3.8 Post Installation Services. DFM agrees to provide the County with post-installation services as follows:

(a) DFM agrees to provide maintenance of the Specified DFM Software to correct program errors and to use good faith reasonable efforts to correct compatibility problems among such Computer Hardware, Specified DFM Third Party Software and the Specified DFM Software, the cost of which is included in the Monthly Fee for such Specified DFM Software; and

(b) DFM agrees to provide Software Releases covering applicable legislative changes and enactment of new laws applicable to such Specified DFM Software, the cost of which is included in the Monthly Fee.

3.9 Training. DFM agrees to provide the County with the following training services with respect to any Specified DFM Software:

(a) DFM will establish, with the help of a designated representative of the County, which users will participate in training and on which subsystems.

(b) DFM will develop a training schedule with sufficient training to allow the department or agency of the County which will have primary responsibility for using the Specified DFM Software to operate it.

(c) DFM will conduct the actual training sessions, including "hands on" and formal classroom training, with the initial training to be on-site at the County's facilities.

User training costs for any Specified DFM Software are included in the Initial Installation Fee and the Monthly Fee. There are no additional costs for training. As subsystems of any Specified DFM Software are enhanced or changed to conform to new requirement, users will be provided training with respect thereto on an on-going basis. Training with respect to enhanced or changed subsystems can be on-site or regional, depending on the material and individual needs of the users.

3.10 Limitation on DFM's Obligations. Notwithstanding any other provision of this Agreement to the contrary, DFM has no duty or obligation to perform any Software Maintenance or to provide the County with any Software Enhancements or Releases, or to provide any training to the County with respect to any Specified DFM Software if the County fails or refuses to utilize the most current revision of the Specified Operating System Software required by DFM; provided, however, in any event, DFM shall give the County at least one-hundred twenty (120) days prior written notice of the need to upgrade or replace the version of the Specified Operating System Software which the County is then using, and DFM shall consult with the County's user group regarding the scheduling of such changes.

#### ARTICLE 4. CONSULTING SERVICES

DFM agrees to provide the County with any Specified Consulting Services which are identified on the Consulting Services Addendum, including, without limitation, enhancement and modification programming for the County to meet any unique requirements of the County, subject to availability of DFM technical personnel and agreement regarding a mutually acceptable hourly rate for DFM's technical personnel. All terms and pricing for the Specified Consulting Services, including the nature of the Specified Consulting Service, hourly rate(s) charged by DFM therefore, the payment terms and any other applicable terms and conditions related thereto, will be set forth on the Consulting Services Addendum.

#### ARTICLE 5. OBLIGATIONS AND RESPONSIBILITIES OF THE COUNTY

5.1 Access to Facilities. The County shall provide DFM and its employees and authorized agents access to the County's facilities, including the Computer Hardware, and shall provide them with adequate facilities (including a desk, work area and computer), to enable DFM to perform its obligations under this Agreement in an effective, efficient and professional manner. Access shall be provided during the County's usual business hours upon reasonable prior notice except in the case of an emergency when access shall be provided as soon as is reasonably practicable.

5.2 Commercial Access. The County shall limit the commercial access to or use of any Specified DFM Software without the prior written approval of DFM, which approval may be conditioned by DFM upon receipt of an acceptable sublicense agreement between the County and the proposed commercial user and the payment to DFM by the County of a reasonable additional license and/or use fee with respect thereto. The County's obligation to limit commercial access or use is expressly restricted to those situations in which the County has actual knowledge of such commercial access or use and the County is not expressly precluded or prohibited by law from enforcing the provisions of this Section 5.2. For purposes hereof, the term "commercial access" means any access to or use of any Specified DFM Software other than (i) by the County for its own internal use in order to fulfill its duties, or (ii) by any person for its non-commercial private use; and "non-commercial private use" means any use or access by such person who is physically present at any County premises for which no consideration is paid, charged or received by the County. It is contemplated that a business which sells or uses the County's Data (as that term is defined in Section 5.4 below) in a commercial enterprise, such as a title company, can be included in the exception described in clause (ii) above to the extent it is physically present at the County's facilities when it is accessing or using the Specified DFM Software to examine the County's Data and/or to update its own data base. The term "physically present" is meant in its literal sense and it is not intended to cover or include off-site access of any kind, including without limitation, off-site access using modems and other communications equipment.

5.3 Specified Operating System Software. The County shall be solely responsible for, and shall pay all costs and expenses associated with, the purchase or license of, and the installation and maintenance of, the appropriate version of the Specified Operating System Software required by DFM at any time or from time to time. The County acknowledges and understands that upgrading of Computer Hardware and of the Specified Operating System Software and any other applications software used in conjunction with the DFM Software will be required from time to time; provided, however, in any event, DFM shall give the County at least one-hundred twenty (120) days prior written notice of the need to upgrade or replace the version of the Specified Operating System Software which the

County is then using, and DFM shall consult with the County's user group regarding the scheduling of such changes.

5.4 Responsibility for the County's Data. At all times during the term of this Agreement, the County shall retain all ownership rights in the County's Data (as that term is defined below). In addition, notwithstanding any use by the County of any DFM Software in connection therewith, the County shall be solely responsible and accountable for the accuracy and completeness of, all data and information stored by it in any database in any format (hereafter referred to as the "County's Data"), and for any use, publication or other dissemination of the County's Data. If the County uses, publishes or otherwise disseminates, or otherwise allows any access to, any portion of the County's Data, whether before or after it has been manipulated by the DFM Software, and whether or not it is a commercial or non-commercial use, by doing so the County is representing to DFM that it has accepted, ratified and approved the accuracy and completeness of the County's Data and accepts full responsibility for it. The County hereby agrees to indemnify, defend, protect and hold DFM harmless from and against any claims, liabilities, judgments, costs and expenses, including reasonable attorneys' fees and costs, which DFM may incur or suffer arising out of the accuracy or inaccuracy of (which includes omissions to) the County's Data, including, without limitation, claims of any third party who accesses the County's Data using the DFM Software.

## ARTICLE 6. PROPRIETARY ASPECTS OF THE DFM SOFTWARE; CONFIDENTIALITY COVENANTS

6.1 Protection of Confidentiality of DFM Software. DFM has taken reasonable security measures to protect the secrecy and confidentiality of the DFM Software. All employees of DFM and other persons who have designed, developed or programmed all or any portion of the DFM Software, or any software included therein, or who otherwise have knowledge of or access thereto, have been adequately notified that the DFM Software is proprietary to DFM and is not to be divulged, used or exploited except as expressly authorized by DFM in writing.

6.2 Confidentiality Covenants of the County. The County acknowledges and agrees that the DFM Software, and all constituent parts thereof, is valuable only as long as it remains secret and confidential. Accordingly, the County agrees to take all steps reasonably necessary to protect and maintain the confidentiality of all DFM Software and to prevent it from entering the public domain or falling into the hands of others not bound by this Agreement. In furtherance hereof, the County agrees as follows:



(a) The County shall use its good faith reasonable efforts to restrict access to any Computer Hardware running or capable of accessing the DFM Software, and to the DFM Software itself, to prevent unauthorized personnel from acquiring significant or confidential information concerning the DFM Software.

(b) To the extent reasonably practicable, the County shall require all persons who will have access to any DFM Software, to sign on an annual basis a confidentiality agreement, in a form provided by DFM which is acceptable to the County.

(c) The County shall not duplicate or reproduce (except to the extent reasonably required to back-up the Specified DFM Software in the ordinary course of business), in any manner, any DFM Software, or any component or constituent parts thereof, and agrees not to disseminate, display or use any DFM Software, or any component or constituent parts thereof, of any information or material concerning any DFM Software, except as is reasonably necessary for the County to perform its functions using any Specified DFM Software and to comply with the terms of this Agreement.

(d) The County shall notify DFM immediately of any and all unauthorized disclosures, or any suspected unauthorized disclosures of any DFM Software.

6.3 Binding Effect. Notwithstanding the fact that certain employees, agents, contractors, subcontractors or licensees of the County are not parties to this Agreement, the terms and provisions of this Article 6 shall be binding upon the County and all of its officers, employees, agents, contractors, subcontractors and licensees.

6.4 Discovery of Specified DFM Software by Legal Process. If at any time, a party to any litigation involving the processes, function or departments of the County which uses any Specified DFM Software, seeks by way of litigation or legal process to discover information in any way related to any Specified DFM Software, or requires the production of any Specified DFM Software, or any component or constituent part thereof, the County shall promptly notify DFM of such matter as soon as the complaint, subpoena or discovery request has been served on the County or its lawyers, but in no event later than ten (10) days after service thereof. Prior to the time specified in the legal document, court order, subpoena or moving papers for the disclosure of information relating to, or the delivery of all or any portion of any Specified DFM Software, the County shall cooperate with DFM so as to maintain, to the maximum extent reasonably practicable and permitted by law, the confidentiality and secrecy of all Specified DFM Software and to request, if requested by DFM, a protective order of the court or legal forum to avoid further disclosure or divulgence of any matters relating to any Specified DFM Software and to assure the continued protection

of the confidentiality thereof. However, such action is to occur only in the event that DFM is unable to make timely intervention into said legal action or proceeding. DFM shall reimburse the County for all reasonable legal fees and expenses which it incurs resulting from actions it has taken pursuant to this Section.

## ARTICLE 7. WARRANTIES AND LIMITATIONS

7.1 Limited Warranty Specified DFM Software. DFM warrants, for the sole benefit of the County and no other person or entity, that the Specified DFM Software shall be capable of performing the core functions set forth on the DFM Software Addendum related thereto, subject to the limitations set forth in Section 7.2 below and on the Specified DFM Software Addendum. This is DFM's sole express warranty with respect to any Specified DFM Software. Any claim by the County against DFM for breach of its express warranty must be in writing and must be promptly delivered by the County to DFM. In the event of any breach of DFM's express warranty, the County's sole and exclusive remedy against DFM, and DFM's sole and exclusive liability to the County, shall be that DFM, at its sole cost and expense, shall exercise good faith (for all purposes of this Agreement, the term "good faith" shall have the same meaning as that term is defined and used in California Commercial Code Section 2103(1)(b)) reasonable efforts to provide adequate programming services to correct such inherent defect, as DFM and the County deem necessary or appropriate. Warranty service performed in accordance with this Section shall be performed during normal weekday business hours, excluding DFM holidays. With respect to any reported errors that result or will result in significant interruption of the County's productivity or down time ("Business Impacting Failures"), DFM shall use its best efforts to begin error correction procedures within twenty-four (24) hours after receipt of such report. With respect to any reported errors that do not constitute Business Impacting Failures, DFM shall use its good faith reasonable efforts to begin error correction procedures no later than seventy-two (72) hours after receipt of such report. DFM's sole and exclusive obligation under the foregoing warranty shall be to exercise its good faith reasonable efforts to implement appropriate error corrections in response to notices from the County of such errors. In the event DFM does not remedy the Business Impacting Failures within 30 days of notification by the County, County may terminate lease payments and cease utilizing software. The County may elect to continue lease payments and utilize a sixty-day transition period as conditioned in Article 10.4.

7.2 Warranty Limitations Specified DFM Software. Notwithstanding the warranty provisions set forth in Section 7.1 above, all of DFM's obligations with respect to such warranties shall be contingent upon the County's use of the Specified DFM Software in

accordance with this Agreement and in accordance with instructions provided by DFM from time to time, including those set forth in the Manuals, as the same may be amended, supplemented or modified from time to time. DFM shall have no warranty obligation:

(a) With respect to any portion of the Specified DFM Software which has been:

(i) Operated by the County or its employees, agents, contractors, subcontractors or licensees in a manner inconsistent with the requirements set forth in the Manuals or elsewhere, or that has been modified by any party other than DFM;

(ii) Damaged in any manner by any cause other than any act or omission of DFM;

(iii) Operated or maintained in environmental conditions outside the parameters designated by DFM in the Manuals or elsewhere;

(iv) Subjected to extreme power surges or electromagnetic field(s);

(v) Reinstalled without the prior written consent of DFM; or

(vi) Determined by DFM to have an error or defect, which fact is conveyed to the County together with supplemental instructions on how to avoid or circumvent the error or defect, and the County fails or refuses to follow the supplemental instructions.

(b) As a result of or in any way connected with any error or defect in the Specified Operating System Software and/or any application software provided by any Third Party Software Vendor; provided, however, in such event, DFM will use its good faith reasonable efforts to resolve the problem to the extent that a resolution is reasonably available by reprogramming the DFM Software;

(c) As a result of or in any way connected with the County's failure or refusal to use the Specified Operating System Software or to upgrade its Computer Hardware as requested by DFM; or

(d) As a result of or in any connected with any of the County's Data.

7.3 Disclaimer of Warranties Specified DFM Software. DFM DOES NOT REPRESENT OR WARRANT THAT THE SPECIFIED DFM SOFTWARE WILL BE FREE FROM ERRORS OR THAT ALL ERRORS IN ANY SPECIFIED DFM SOFTWARE WILL BE CORRECTED. THE WARRANTY STATED IN SECTION 7.1 IS THE SOLE AND EXCLUSIVE WARRANTY OFFERED BY DFM. THERE ARE NO OTHER WARRANTIES RESPECTING THE SPECIFIED DFM SOFTWARE,

EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF DFM HAS BEEN INFORMED OR IS OTHERWISE MADE AWARE OF SUCH PURPOSE. NO AGENT OF DFM IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF DFM SET FORTH IN THIS ARTICLE 7.

7.4 Limitation on Liability and Remedy Specified DFM Software. THE COUNTY ACKNOWLEDGES THE COMPLEXITY AND INTERRELATIONSHIPS OF EACH OF THE COMPONENT AND CONSTITUENT PARTS COMPRISING ANY SPECIFIED DFM SOFTWARE. THE COUNTY FURTHER ACKNOWLEDGES AND AGREES THAT THE MONTHLY FEE WHICH DFM IS CHARGING FOR ANY SPECIFIED DFM SOFTWARE DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY DFM OF THE RISK OF THE COUNTY'S INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH THE COUNTY'S USE OF ANY SPECIFIED DFM SOFTWARE. ACCORDINGLY, THE COUNTY AGREES THAT DFM SHALL NOT BE RESPONSIBLE TO THE COUNTY, OR ANY DEPARTMENT, AGENCY OR SUBDIVISION THEREOF, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE LICENSING, LEASING OR USE OF ANY SPECIFIED DFM SOFTWARE; PROVIDED HOWEVER THAT DFM SHALL BE RESPONSIBLE FOR SUCH INCIDENTAL (BUT NOT CONSEQUENTIAL) COSTS AND EXPENSES ARISING IN CONNECTION WITH ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS AS SET FORTH IN ARTICLE 8 BELOW.

7.5 Warranty and Limitations Computer Hardware. ALL ITEMS OF TANGIBLE PERSONAL PROPERTY, INCLUDING ANY COMPUTER HARDWARE WHICH ARE RESOLD BY DFM TO THE COUNTY, ARE SOLD "AS IS" AND "WITH ALL FAULTS"; PROVIDED, HOWEVER, DFM HEREBY ASSIGNS TO THE COUNTY ALL OF ITS RIGHTS UNDER ANY WARRANTIES IT RECEIVES FROM THE COMPUTER HARDWARE VENDOR. DFM MAKES NO REPRESENTATION OR WARRANTY AS TO THE TYPE, NATURE OR KIND OF WARRANTY, IF ANY, FROM THE COMPUTER HARDWARE VENDOR. EXCEPT AS SET FORTH IN THIS SECTION 7.5, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF DFM WITH RESPECT TO THE COMPUTER HARDWARE AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF DFM HAS BEEN INFORMED OR IS OTHERWISE MADE AWARE OF SUCH PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. NO AGENT OF DFM IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF DFM SET FORTH IN THIS ARTICLE 7. THE COUNTY FURTHER ACKNOWLEDGES AND AGREES THAT ANY MARK-UP OR COMMISSION WHICH DFM RECEIVES IN CONNECTION WITH THE SALE OF THE COMPUTER HARDWARE DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY DFM OF THE RISK OF THE COUNTY'S INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH THE COUNTY'S USE OF THE COMPUTER HARDWARE. ACCORDINGLY, THE COUNTY AGREES THAT DFM SHALL NOT BE RESPONSIBLE TO THE COUNTY, OR ANY DEPARTMENT, AGENCY OR

SUBDIVISION THEREOF, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PURCHASE OR USE OF ANY COMPUTER HARDWARE.

## ARTICLE 8. HOLD HARMLESS \_ COPYRIGHTS, PATENTS AND LICENSES

8.1 Indemnification by DFM. DFM, at its own expense, shall indemnify, defend, protect and hold the County harmless against any claim which may be brought against the County or its officers, agents or employees, to the extent that it is based on a claim that the County's use of the Specified DFM Software pursuant to this Agreement, or any of its components or constituent parts leased or licensed hereunder, infringes any patent, copyright, license or trade secret of any third party, and in such event, DFM shall pay all of those costs and damages, including expenses and reasonable attorneys' fees, finally awarded against the County or any of its officers, agents or employees attributable to such claim. To the extent allowed by law, control of the defense, including all negotiations and discussions regarding compromise and settlement, shall be vested in DFM, but shall be with the advice and consent of the County. The obligations of DFM set forth in this Section are conditional upon compliance by the County with all of the provisions set forth in Sections 8.2 through 8.3 below.

8.2 Notice of Claims. The County covenants and agrees to provide DFM with written notice of any actual, threatened or potential infringement claim within thirty (30) days of notice thereof by or to the County.

8.3 Remedial Action. If, in the opinion of DFM, the Specified DFM Software or any of its components leased to the County is likely to or has become the subject of a claim of infringement of patents, copyrights, licenses or trade secrets of any third party, then, without diminishing DFM's obligations to satisfy the final award, DFM may, at its option and expense, either (i) obtain the right for the County to continue to use the Specified DFM Software and its components leased hereunder, or (ii) substitute for the allegedly infringing components other equally suitable components mutually satisfactory to the County and DFM.

## ARTICLE 9. TERM

The initial Lease Term for any Specified DFM Software or any Specified Consulting Service shall be set forth on the Addendum applicable thereto. After the expiration of the initial term, this Agreement shall automatically continue with respect to such Specified DFM

Software or such Specified Consulting Service on a year to year basis, unless either party gives the other written notice, at least ninety (90) days prior to the expiration of the term, of its decision not to renew the term hereof with respect to such Specified DFM Software or such Specified Consulting Service, in which case the term as it relates to such Specified Consulting Service and/or such Specified DFM Software shall terminate on the June 30th at the expiration of its term. Continuance of the term of this agreement may include a negotiated increase in the Monthly Fee.

## ARTICLE 10. RIGHT TO TERMINATE OR SUSPEND PERFORMANCE; BREACHES

10.1 Non-Appropriation of Funds. The continuation of this Agreement, as it relates to any Specified Consulting Service or to any Specified DFM Software after June 30th of the County's fiscal year, is subject to appropriation by the County's Board of Supervisors for the necessary funding hereof. In the event of non-appropriation of funds for the Monthly Fee, or any other consideration payable to DFM hereunder, this Agreement will automatically and immediately terminate on June 30th of the then-current County fiscal year end as to any Specified Consulting Service and the Specified DFM Software for which no appropriation was approved. However, in no event shall this Agreement be terminated, as provided in this Section, for the purpose of replacing any Specified Consulting Service and/or any Specified DFM Software. Any attempt by the County to replace any Specified Consulting Service and/or any Specified DFM Software prior to the expiration of the term set forth in the Addendum applicable thereto, shall be deemed to be a material breach by the County of this Agreement and the damages to which DFM will be entitled as a result thereof shall assume, for these purposes, that the County had fully appropriated all funds for the particular Consulting Service and/or the Specified DFM Software for the full term set forth in the Addenda related thereto. Any permissible termination of this Agreement pursuant to this Section shall not relieve the County of its obligations set forth in Article 6 above.

10.2 County Breaches. For purposes of this Agreement, the term "County Breach" or "County Breaches" means any one or more of the following events, acts or occurrences:

(a) Any breach by the County, or any of its officers, employees, agents, contractors, subcontractors or licensees, of any of the provisions of Article 6; provided, however, instead of terminating the Agreement, DFM, in its sole and absolute discretion, may give notice to the County of the breach, demanding adequate assurances from the County that it will protect the proprietary interest of DFM and remedy all prior breaches. In the event that the County fails to provide such adequate assurances and to remedy such

breaches within seventy-two (72) hours of receipt of the notice ("Suspense Period"), the Agreement will automatically terminate as if no demand for adequate assurances had been made. For purposes of this Section, the parties agree that the Suspense Period is reasonable based on the proprietary interest to be protected by DFM and the interest of the County to continue the right to use any Specified DFM Software.

(b) Any modification of any DFM Software which is accomplished or undertaken by the County, its employees, or its authorized agents subject to this Agreement other than DFM or its employees or authorized agents, shall give DFM the right to terminate the Agreement, or any portion thereof related to the Specified DFM Software which was subject to the unauthorized modification.

(c) Any breach by the County of any of its monetary obligations to DFM, in which event DFM shall have the right, at any time after thirty (30) days prior written notice, to suspend its performance under this Agreement and, if the County Breach continues for an additional thirty (30) days, then DFM may, at its option, terminate the Agreement, or any portion thereof related to the Specified Consulting Service or Specified DFM Software which was involved in such breach.

(d) Any material breach by the County of any of its other obligations under this Agreement (other than those obligations described in subparagraphs (a) through (c) above), which continues for a period of thirty (30) days after written notice thereof from DFM specifying the nature of the breach and the curative action, if any, which must be taken, in which event the provisions of Section 10.4 shall become applicable at the expiration of the thirty (30) day period if the breach has not been fully cured at that time.

Subject to the provisions of Section 10.4 below, the remedies in favor of DFM set forth in this Section 10.2 are not exclusive and DFM shall have the right to pursue any other remedy to which it may be entitled.

10.3 Debilitating Event. Any of the following events, which occurs with respect to DFM, shall be deemed to be a "Debilitating Event" and shall cause this Agreement to be modified immediately upon notice to the County of such Debilitating Event and shall cause the Agreement to terminate automatically two hundred forty (240) days thereafter:

(a) Any assignment by DFM for the benefit of its creditors; or the entry of a court order appointing a receiver or trustee for all or substantially all of DFM's assets or properties, which order shall not be vacated, set aside or stayed within sixty (60) days from the day of entry of said court order; or the filing by DFM of a petition in bankruptcy or the

commencement of any similar proceeding under any law for the relief of debtors by or against DFM; or

(b) Any permanent cessation by DFM of its business, which is not succeeded to by a successor in interest; or

(c) Any voluntary termination or dissolution of DFM pursuant to which the rights of DFM under this Agreement have not been transferred to a successor in interest.

10.4 Transition Period. For purposes of this Agreement, the term "Transition Period" shall mean the sixty (60) day period immediately following the occurrence of a County Breach other than a County Breach related to the payment of money to DFM, or two hundred forty (240) days following the occurrence of a Debilitating Event, whichever is applicable. This Agreement shall continue, and all obligations of the parties hereunder shall remain, in full force and effect during the Transition Period subject only to legal impairments on the ability of DFM to perform if the Transition Period arises as a result of a Debilitating Event. Provided, however, in no event shall the Transition Period extend beyond the expiration of the term of this Agreement. The obligations of the County set forth in this Agreement shall continue, to the extent applicable, notwithstanding the termination of this Agreement.

10.5 Obligations of the County At Expiration of Transition Period.

(a) Immediately upon the termination of this Agreement, the County shall return to DFM any and all tangible manifestations of any DFM Software previously delivered by DFM to the County, and any copies, duplicates or reproductions thereof, whether authorized or not.

(b) In the event of the occurrence of a Debilitating Event, the County shall be permitted to continue to use any Specified DFM Software during the Transition Period; provided, however, DFM will not provide any Software Maintenance, Software Enhancements or Software Releases during such period of time; and, provided, further, the obligation of the County to pay the Monthly Fee shall be reduced to an amount equal to eighty percent (80%) of the applicable Monthly Fee which would otherwise be applicable during such period.

10.6 Option to Purchase the Specified DFM Software. In the event of the termination of this Agreement as related to any Specified DFM Software, where such termination is as the result of a Debilitating Event, but only in such event, the County shall have the right and option to purchase the copy of the Specified DFM Software (including a



copy of the source code) which it has installed on its Computer Hardware ("Software Purchase Option") on the terms and subject to the conditions set forth in this Section:

(a) In order to exercise its option pursuant to this Section, the County must deliver to DFM written notice ("Option Notice") of its intent to exercise the Software Purchase Option, specifying the Specified DFM Software which it desires to purchase, and it must deliver the Option Notice to DFM prior to the expiration of the Transition Period.

(b) The Purchase Price (as that term is defined below) is payable in cash in full not later than thirty (30) days after receipt by DFM of the Option Notice.

(c) The Purchase Price shall be equal to sixty (60) times the then applicable Monthly Fee for the Specified DFM Software which is the subject of the Software Purchase Option if the termination is during the first year after the commencement of the initial term of this Agreement as it is related to such Specified DFM Software, forty-eight (48) times the then applicable Monthly Fee if the termination is during the second year of the initial term, and thirty-six (36) times the then applicable Monthly Fee if the termination is at any other time.

(d) The Software Purchase Option is personal to the County and may not be sold or assigned. Strict compliance by the County with all of the provisions of this Section is required. Failure to strictly comply with the time frames shall cause the Software Purchase Option to terminate.

#### ARTICLE 11. NO JOINT VENTURE

Nothing contained in this Agreement, or in any Addenda, shall be deemed or construed as creating a joint venture or partnership between the parties. Except as expressly set forth herein, no party by virtue of this Agreement or any Addenda is authorized as an agent, employee or legal representative of any other party, and the relationship of the parties is, and at all times will continue to be, that of independent contractors.

#### ARTICLE 12. INJUNCTIVE RELIEF

Notwithstanding any provision of this Agreement or of any Addenda to the contrary, either party shall have the right to seek and obtain injunctive relief against the other party

from any judicial or administrative authority having jurisdiction, including any municipal or superior court of the State of California or any federal district court.

**ARTICLE 13.  
MISCELLANEOUS PROVISIONS**

13.1 Permits and Licenses. DFM and all of its employees and agents shall secure and maintain in force such license and permits as are required of DFM by law in connection the furnishing of equipment, materials or services necessary for DFM's performance under this Agreement.

13.2 Notices. All notices, requests, demands and other communications required or contemplated hereunder shall be in writing, shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed to have been given upon the earlier of (a) the date of personal delivery to the person to receive such notice at the address indicated below or (b) if mailed to the person to receive such notice at the address indicated below, four (4) business days after the date of posting by the United States Post Office as evidenced by the execution of the return receipt. The parties addresses, for all purposes hereof, are as follows:

If to DFM:                    DFM Associates  
   10 Chrysler  
   Irvine, California 92618  
   Attn: Thomas G. Diebolt, President

If to the County:            \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

Notice of change of address shall be given by written notice but shall not be deemed effective until it has been given in the manner detailed in this Section.

13.3 Not used.

13.4 Not used.

13.5 Assignment. The County and DFM shall not be entitled to assign this Agreement or any of its rights or interest in this Agreement, including any rights or interests

in any Addenda. This Agreement contemplates a license between DFM and the County without any right to license, sublicense, assign or sublease. Except as provided herein, this Agreement shall be binding upon the parties hereto and their respective successors and assigns.

13.6 Captions. The captions of the sections and subsections of this Agreement are included for reference purposes only and are not intended to be a part of this Agreement or in any way to define, limit or describe the scope or intent of the particular provision to which they refer.

13.7 Gender; Singular and Plural Number. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal entity when the context so requires. Also, the singular shall include the plural number where the context so requires and visa versa.

13.8 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. In the event of any ambiguity in or dispute regarding the interpretation of this Agreement, or any provision hereof, the interpretation of this Agreement shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the party who is the draftsman of this Agreement.

13.9 Partial Invalidity and Severability. If any provision of this Agreement shall be held or deemed to be, or shall, in fact, be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever; provided, however, if any provision of this Agreement relating to the payment of monies to DFM or any provision of Articles 6, 7, 11 or 13 is found to be inoperative or unenforceable for any reason, then in such event, such provision shall not be severed from or read out of this Agreement. The invalidity of any one or more phrases, sentences, clauses, sections or subsections of this Agreement shall not affect the remaining portions thereof except as provided in the preceding sentence.

13.10 Further Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements, and to give such further written assurances as may be reasonably requested by the other party, to better evidence and reflect the transactions described in and contemplated by this Agreement, and to carry into effect the intents and purposes of this Agreement.

13.11 No Implied Waivers. The failure of either party at any time or from time to time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any later time nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.

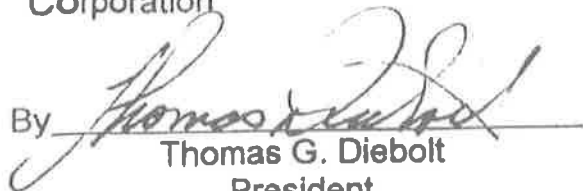
13.12 Applicable Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the internal laws, and not the laws pertaining to conflicts or choice of laws, of the State of California applicable to agreements made and to be performed wholly within the State of California.

13.13 Counterparts. This Agreement and any Addenda may be executed simultaneously in one or more counterparts, each of which together shall constitute one and the same instrument.

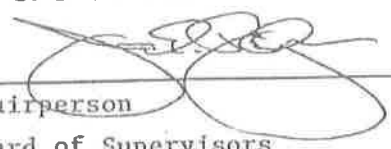
13.14 Entire Agreement; Amendment. This Agreement and all Addenda incorporated herein, and all other agreements, documents or writings required to be delivered in connection herewith, contain the entire understanding between the parties hereto with respect to the subject matter hereof and supersede any and all prior or contemporaneous written or oral negotiations and agreements between them regarding the subject matter hereof. No addition, modification or amendment of or to any term or provision of this Agreement, or to this Agreement as a whole, shall be effective unless set forth in writing and signed by all of the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above mentioned.

DFM ASSOCIATES, a California Corporation

By   
Thomas G. Diebolt  
President

COUNTY OF INYO, a political subdivision of the State of California

By   
Chairperson  
Its Board of Supervisors

## EIMS™ for Windows SOFTWARE ADDENDUM

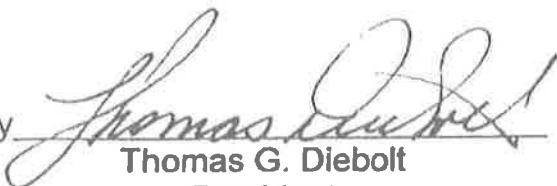
WHEN SIGNED ON BEHALF OF THE COUNTY AND DFM  
THIS ADDENDUM SHALL BECOME A PART OF THAT  
CERTAIN MASTER AGREEMENT, DATED AS OF \_\_\_\_\_, 2007  
("MASTER AGREEMENT")

EIMS™ is an acronym for Election Information Management System and means the computer software designed by DFM for use in the various processes used to register and manage voters, election officials and polling places as well as the election process itself. EIMS™ includes the EIMS™ Software, the EIMS™ Subsystems, any EIMS™ Enhancement and any EIMS™ Software Releases. EIMS™ is proprietary to DFM and reference is made to Article 6 of the Agreement.

- 10 Core Function: The core function of the EIMS™ is to gather and maintain data for use in the process of registering voters and the processing of elections. The ability of the EIMS™ to perform the core functions is dependent upon, among other things, all of the following: (1) accuracy and completeness of the County's Data; and (2) continual verification by the County of the accuracy and completeness of the County's Data.
- 20 Description of EIMS™: EIMS™ is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- 30 Installation: The DFM Software shall be deemed to have been installed when the County is able to perform daily routine maintenance of the Voter File, the Precinct District File and the Street Guide.
- 40 Initial Installation and Data Conversion Fee : \$20,000.
- 41 LeadTools Image License: \$600.
- 50 Initial Monthly Fee: \$1000.00.
- 60 Initial Lease Term: Sixty (60) months from the installation of the EIMS™ and continuing thereafter until the next following June 30th (subject to extension as provided in Article 9 of the Master Agreement).

70 Incorporation of Master Agreement. The provisions of the Master Agreement, including, without limitation, Article 3, are incorporated herein by this reference as if set forth in full.

DFM ASSOCIATES, a California Corporation

By   
Thomas G. Diebolt  
President

COUNTY OF INYO, a political subdivision of the State of California

By   
Chairperson  
Its Board of Supervisors

## EXHIBIT A

EIMS® for Windows includes the following functional Modules:

### Precinct/District

Create and maintain precincts, districts and the relationship between those entities.

### Street Guide

Create and maintain street segments and their relationship to precincts.

### Office/Incumbent

Create and maintain office types, office definitions, and incumbent data.

### Voters

Create and maintain voter registration records. Allows for maintaining active, canceled and inactive voter records. Provides duplicate checking, customer tape generation, and other reporting features.

### Affidavit Tracking

Maintains records of affidavits provided to third parties and tracks those subsequently returned.

### Officers/Polling Places

Maintain records of polling places, election officers and election night workers.

Maintain history.

### Election Workspace

Manage Election definitions including contests, candidates and measures. Provides Ballot typing, consolidation, election officer and polling place management for the election. Produce election related mailings and reports. Manage Absentee/Mailed ballot voters.



**Petition Checking**

Manage petition information, define new petitions, select random sample, provides system directed signature checking.

**Resources**

Manage county specific information and options.

## INYO COUNTY VOTER REGISTRATION SYSTEM DATABASE PROJECT STATEMENT OF WORK

The specific objective for DFM and Inyo County is to replace the current software application currently in use in Inyo County with the software from DFM Associates.

The project will be in full production by June 30, 2007. DFM will assist Inyo County with the following high-level functional components:

- Initial rollout of the computer hardware and software infrastructure deliverable to the Inyo County Clerk's Office.
- Installation of the DFM software application onto the hardware.
- Data conversion of existing Inyo County Voter Registration data into the new database architecture of the DFM application. This consists of both data and images (of scanned documents or signatures if any).
- Training of Inyo County staff in the use of the new software.

### **Deliverables (Inyo County)**

Inyo County is responsible for the following deliverables and will work in conjunction with DFM on feedback where appropriate:

- Inyo County will ensure that the appropriate staff and resources are assigned and available to the project. These include, but are not limited to, elections personnel, technical support specialist, network administrators, and management as needed.
- Inyo County will ensure that the data that is provided to the Contractor is sufficient for conversion needs.
- Inyo County will be responsible for the installation of network infrastructure.
- Inyo County will be responsible for providing an appropriate location for the hardware and appropriate power/network connections and access.
- Inyo County will be responsible for receiving the hardware inspecting the shipment and documenting any damaged containers along with the shipping company's agent/driver.
- Inyo County will be responsible for all equipment storage in a safe and secure location until DFM Associates personnel arrive on-site to install the hardware
- Inyo County will be responsible for forwarding copies of the packing lists of each shipment as they arrive to DFM.

### **Deliverables (DFM)**

DFM is responsible for the following deliverables and will work in conjunction with Inyo County on input and feedback where appropriate:

- DFM will be responsible for mitigating risk.
- DFM will be responsible for data conversion from the current system.
- DFM will be responsible for installing the server hardware in county specified location.
- DFM will be responsible for server and application software installation onto hardware.
- DFM will be responsible for ensuring all scanners and printers work with the installed application.
- DFM will be responsible for integration testing including installation of the application on a new set of hardware, functional testing.
- DFM will be responsible for the providing training to elections personnel.



# County of Inyo



## County Administrator - Risk Management

### CONSENT - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Aaron Holmberg

**SUBJECT:** Acquisition authorization for automated external defibrillators (AED) and related equipment

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#### **RECOMMENDED ACTION:**

Request Board: A) declare Heartsmart of New Milford, CT, the successful bidder for 20 automated external defibrillators (AEDs) and related equipment (15 wall cabinets, 1 trainer unit, and 5 travel cases) per Bid No. 2020-02; and B) authorize the purchase of up to 20 AEDs and related equipment (15 wall cabinets, 1 trainer unit, and 5 travel cases) from Heartsmart of New Milford, CT, in an amount not to exceed \$24,833.26.

#### **SUMMARY/JUSTIFICATION:**

If you approve this request, Risk Management will acquire and Public Works will install automated external defibrillators (AEDs) so that the life saving devices can be available within 3 minutes of most county facilities. The placement of these devices could help save a life that might otherwise be lost due to distance and availability of emergency personnel and their equipment. State law does not require the county to acquire and install these devices, so the acquisition is at your Board's discretion.

#### **BACKGROUND/HISTORY OF BOARD ACTIONS:**

An automated external defibrillator (AED) is a portable electronic device that can automatically diagnose life-threatening cardiac arrhythmia of ventricular fibrillation and pulseless ventricular tachycardia. The device is able to treat the person through defibrillation, the application of electricity which stops the arrhythmia, allowing the heart to re-establish an effective rhythm.

State and Federal law does not require the County to have or install AEDs at the following locations where installation is recommended due to occupancy and location: Bishop Library, Grove Street, One Stop, Bishop Airport, Progress House, Big Pine Senior Center, Eastern California Museum, Courthouse, Courthouse Annex, Independence Administration Building, Independence Legion Hall, Water Department, Statham Hall, Tecopa Community Center, and potentially other locations.

Though recommended, no training is absolutely necessary for someone to operate an AED for the designated purpose. They are pretty self explanatory, and an automated voice guides the user. Use of an AED is not required of employees who are not emergency responders. AED machines last for ten years. They require monthly spot checks to verify all the parts at present, biannual battery checks, and pads replacements every five years. If you approve this resolution, a policy will be created specific to use and care of the devices. These devices expire after 10 years and will need to be replaced.

We received bids from: Heart Smart, Allied 100, Office Depot, and a certified small business named DiPietro and Associates.

DiPietro & Assoc - \$25,692.99  
Allied 100, LLC - \$26,812.89  
Office Depot - \$37,260.15

After a careful review of price (x25 weight), product (x5 weight), customer service (x5 weight), installation (x1 weight), warranty (x10 weight), delivery timing (x5 weight), and experience and reputation (x10 weight), Heart Smart was selected.

Public Works will install the machines.

If your Board approves this resolution, related future costs will include device pads replacements in 5 year (approximately \$200 per device), and replacement of the devices in 10 years (approximately \$1,100 per device plus 10 years of inflation). Staff time will also be required for employee training on device care and use (conducted in-house), and brief monthly monitoring of the devices (conducted by trained staff).

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could decide not to acquire AEDs at this time.

**OTHER AGENCY INVOLVEMENT:**

Public Works, Purchasing, County Counsel, and the CAO were consulted. The County Purchasing Agent concurs in the recommendation regarding the successful bidder. The County's Purchasing Division was involved in the bid process.

**FINANCING:**

There will not be a fiscal impact this year because this will be paid for with PRISM subsidy funds. However, there will be a potential future fiscal impact to the general fund to replace the device pads in 5 years with a cost of (\$4000) and the replacement of actual devices in 10 years with a cost of (\$20,000).

**ATTACHMENTS:**

**APPROVALS:**

Aaron Holmberg	Created/Initiated - 7/21/2020
Darcy Ellis	Approved - 7/22/2020
Marshall Rudolph	Approved - 7/22/2020
Emma Bills	Approved - 7/28/2020
Sue Dishion	Approved - 7/28/2020
Amy Shepherd	Approved - 7/28/2020
Aaron Holmberg	Final Approval - 7/28/2020



# County of Inyo



## Health & Human Services - First 5

### CONSENT - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Serena Johnson

**SUBJECT:** Northern Inyo Hospital Childbirth Education and Breastfeeding Support Contract Amendment 1

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**RECOMMENDED ACTION:**

Request Board approve Amendment No. 1 to the contract between the County of Inyo and Northern Inyo Hospital, modifying the Schedule of Fees budget for Fiscal Year 2020-2021, and authorize the Chairperson to sign.

**SUMMARY/JUSTIFICATION:**

Northern Inyo Healthcare District (NIHD) has been financially impacted due to the COVID-19 pandemic. In an effort to recover lost finances, the NIHD board voted on Wednesday, June 17, 2020 to close the NEST program due to net operating loss of income. NIHD staff reached out to First 5 Inyo County to propose changes to the childbirth education and breastfeeding support contract to ensure critical services are maintained despite the NEST program closing. The changes requested to the fiscal year 2020-2021 budget include adding personnel time to deliver the childbirth education classes and the new mothers' support group and decreasing the budget items for travel to conferences. The First 5 Inyo County Commission approved the budget modification request at their June 25, 2020 meeting. This budget modification request aligns closely with the First 5 Inyo County Commission's commitment to support partner agency's recovery from the COVID-19 pandemic due to impacts on finances from the recession in order to maintain essential family services.

First 5 Inyo County Commission invested in the NEST program in 2015 to support the systems building initiative of becoming a Baby Friendly Hospital. Fiscal year 2020-2021 will be the final year in the second contract iteration. NIHD achieved Baby Friendly Hospital accreditation in September 2018, and has successfully maintained accreditation to present. First 5 Inyo County investments have supported staff training, purchasing of material, and implementation of new programs like Period of Purple Crying, Safe Sleep, New Moms Group, and Childbirth Education Class.

First 5 Inyo County is respectfully requesting your Board's support in approving this contract amendment to modify the budget for Fiscal Year 2020-2021 in order to ensure babies born in Inyo County get breastmilk as their first food and to support mothers through the fourth trimester.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

NA

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your board could choose not to approve this amendment which would prevent First 5 Inyo County from supporting childbirth education and breastfeeding support initiatives at Northern Inyo Hospital.

**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

100% State Funding. This contract will be budgeted in the First 5 budget (643000) in Professional Services (5265). No County General Funds.

**ATTACHMENTS:**

1. NIHD NEST Contract Amendment No. 1
2. NIH 2020-2021 Modified Budget
3. NIH NEST Original Contract 2018-2021

**APPROVALS:**

Serena Johnson	Created/Initiated - 7/13/2020
Darcy Ellis	Approved - 7/14/2020
Marilyn Mann	Approved - 7/22/2020
Meaghan McCamman	Approved - 7/24/2020
Melissa Best-Baker	Approved - 7/24/2020
Marshall Rudolph	Approved - 7/24/2020
Amy Shepherd	Approved - 7/28/2020
Marilyn Mann	Final Approval - 7/29/2020

**AMENDMENT NUMBER 1 TO**  
**AGREEMENT BETWEEN THE COUNTY OF INYO AND**  
**Northern Inyo Hospital**  
**FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Northern Inyo Hospital, of Bishop, CA (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated June 26, 2018, on County of Inyo Standard Contract No. 116, for the term from July 1, 2018 to July 30, 2021.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

WHEREAS, such Agreement provides that it may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties thereto, if such amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Contractor hereby amend such Agreement as follows:

Due to financial impacts from COVID-19 pandemic, Northern Inyo Healthcare District (NIHD) will be closing the NEST program August 1, 2020. This contract amendment will ensure critical services like childbirth education and breastfeeding support continue.

Amend Attachment A Scope of Work activities to no longer include implementing donor breastmilk program, attending conferences in-person, and NEST lactation consultant services. Scope of Work activities that will continue include offering child birth classes, weekly new moms' support group, safe sleep education, distribution of First 5 New Parent Kits, and training for staff in Labor & Delivery and Bishop Pediatrics to complete Lactation Educator and International Board Certified Lactation Consultants certificates.

Amend Scope of Work reporting requirements to no longer include data on pre-admission visits, post-discharge visits, follow-up NEST visits, outpatient lactation consults, and number of infants receiving donor breastmilk. Quarterly reporting requirements will still include: Number and demographics (race, ethnicity, and language) of mothers giving birth in reporting period; Number of mothers attending birthing classes, attending new moms' support group, receiving Safe Sleep education, and breastfeeding rates at discharge, two months, four months, and six months; and Number of staff certified and in-training as Certified Lactation Educators and International Board Certified Lactation Consultants.

Amend Attachment B Schedule of Fees budget for Fiscal Year 2020-2021 with the following changes:

1. add a Personnel line item for RN Wages for Childbirth Classes and New Moms Group +\$7,140
2. delete Education line item for 1 RN to attend Lactation Conference in 2020 -\$700
3. delete both Travel line items for travel to conferences -\$4,000
4. delete Miscellaneous line item for Marketing and Milk Bank Donor Program -\$2,600
5. add to Miscellaneous line item for BFUSA Annual fee +\$200

See attached Budget Table of changes for 2020-2021.

The effective date of this Amendment to the Agreement is August 1, 2020.

All the other terms and conditions of the Agreement are unchanged and remain the same.



AMENDMENT NUMBER 1 TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
Northern Inyo Hospital  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**COUNTY OF INYO**

By: \_\_\_\_\_

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

**CONTRACTOR**

By: Kelli Davis  
Signature

Kelli Davis, Interim CEO  
Type or Print

Dated: 07/10/2020

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

\_\_\_\_\_  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

\_\_\_\_\_  
County Risk Manager

## NIH 2020-2021 Special Grant Budget Request

SUPPLIES	Contract Approved	Requested BUDGET	Change
<b>PERSONNEL</b>			
RN Wages for Childbirth Classes and New Moms Group	\$0	\$7,100.00	\$7,100.00
<b>EDUCATION</b>			
2 RNs to attend CA Breastfeeding Summit in 2019	\$950	\$950.00	\$0.00
1 RN to attend International Lactation Consultant Association (ILCA) Conference in 2020	\$900	\$200.00	-\$700.00
Certified Lactation Educator (2 employee)	\$1,300	\$1,300.00	\$0.00
Lactation Consultant certification (1 employee)	\$1,500	\$1,500.00	\$0.00
Childbirth Educator training for 1 staff RN	\$1,500	\$1,500.00	\$0.00
BFHI Staff Training online for new hires/providers/clinic staff	\$500	\$500.00	\$0.00
<b>SUPPLIES</b>			
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	\$2,250.00	\$0.00
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500	\$4,500.00	\$0.00
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700	\$2,700.00	\$0.00
<b>TRAVEL</b>			
Travel/room & board for ILCA Conference (1 attendee)	\$2,000	\$0.00	-\$2,000.00
Travel/room & board for CBS (2 attendees)	\$2,000	\$0.00	-\$2,000.00
<b>MISCELLANEOUS</b>			
Marketing	\$600	\$0.00	-\$600.00
Milk Bank Donor Breastmilk Program	\$2,000	\$0.00	-\$2,000.00
BFUSA Annual Fee	\$1,300	\$1,500.00	\$200.00
<b>TOTALS</b>	<b>\$24,000</b>	<b>\$24,000.00</b>	

# *In the Rooms of the Board of Supervisors*

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisors of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 26<sup>th</sup> day of June 2018 an order was duly made and entered as follows:

*HHS-First 5 –  
Northern Inyo  
Hospital Contract*

Moved by Supervisor Griffiths and seconded by Supervisor Pucci to approve the contract between the County of Inyo and Northern Inyo Hospital for Childbirth Education and Breastfeeding Support services in an amount not to exceed \$72,000 for the period of July 1, 2018 to June 30, 2021, contingent upon continued grant funding and the Board's adoption of future budgets, and authorize the Chairperson to sign. Motion carried unanimously.

*BOJ  
NIH  
FIRST 5  
Fiscal  
File*

WITNESS my hand and the seal of said Board this 26<sup>th</sup>  
Day of June, 2018



*KEVIN D. CARUNCHIO  
Clerk of the Board of Supervisor*

By: \_\_\_\_\_

<b>Routing</b>
CC Purchasing Personnel Auditor CAO Other: HHS DATE: July 6, 2018

**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND** Northern Inyo Hospital  
**FOR THE PROVISION OF** Childbirth Education and Breastfeeding Support **SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the Prenatal Education \_\_\_\_\_ services of Northern Inyo Hospital of Bishop, CA \_\_\_\_\_ (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Marilyn Mann whose title is: Health & Human Services Director. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

**2. TERM.**

The term of this Agreement shall be from July 1, 2018 to June 30, 2021 unless sooner terminated as provided below.

**3. CONSIDERATION.**

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed Seventy-Two Thousand (\$72,000.00) Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

**4. WORK SCHEDULE.**

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

**5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses,

professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.sam.gov>.

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

#### **7. COUNTY PROPERTY.**

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

#### **8. WORKERS' COMPENSATION.**

Contractor shall provide Statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

#### **9. INSURANCE.**

For the duration of this Agreement Contractor shall procure and maintain insurance of the scope and amount specified in Attachment C and with the provisions specified in that attachment.

**10. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

**11. DEFENSE AND INDEMNIFICATION.**

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

**12. RECORDS AND AUDIT.**

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**13. NONDISCRIMINATION.**

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

**14. CANCELLATION.**

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

**15. ASSIGNMENT.**

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

**16. DEFAULT.**

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

**17. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-three (23) below.



**18. CONFIDENTIALITY.**

Contractor further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**19. CONFLICTS.**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**20. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

**21. SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**22. FUNDING LIMITATION.**

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-three (23) (Amendment).

**23. AMENDMENT.**

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

**24. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Inyo	
First 5 Inyo County	Department
568 West Line Street	Street
Bishop, CA 93514	City and State

Contractor:	
Northern Inyo Hospital	Name
150 Pioneer Lane	Street
Bishop, CA 93514	City and State

**25. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND Northern Inyo Hospital**  
**FOR THE PROVISION OF Childbirth Education and Breastfeeding Support SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
THIS 26th DAY OF June, 2018.

**COUNTY OF INYO**

By: [Signature]

Dated: C-26-18

**CONTRACTOR**

By: [Signature]  
Signature

Kevin S. ZANTON, MD, MBA  
Print or Type Name

Dated: MAY 17 2018

APPROVED AS TO FORM AND LEGALITY:

County Counsel

[Signature]

APPROVED AS TO ACCOUNTING FORM:

[Signature]

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

[Signature]

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

[Signature]

County Risk Manager

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND Northern Inyo Hospital  
FOR THE PROVISION OF Childbirth Education and Breastfeeding Support SERVICES**

**TERM:**  
July 1, 2018 June 30, 2021  
**FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

**SCOPE OF WORK:**

The Contractor shall provide birthing classes, breastfeeding support groups, and related services as detailed in the accompanying Scope of Work attachment incorporated into this contract (Pages 9a and 9b). Contractor shall complete the tasks listed in this plan no later than June 30, 2021. Contractor shall provide requested fiscal and evaluation reports at quarterly intervals to First 5 Inyo. The schedule of due dates can be found in Attachment B Schedule of Fees.

All publicity materials for the public produced pursuant to this agreement shall include "Funded by First 5 Inyo County" and or the First 5 Inyo County logo. The Contractor shall coordinate with First 5 Inyo to promote the regularly scheduled birth classes and breastfeeding support group meetings, and that flyers for related services are available to new and expectant parents in NEST and new parent kits.

The major services this contract addresses and the ways they are to be measured include:

- Number of mothers served by:
  - o Birthing Classes
  - o Pre-admission visits
  - o Post-discharge visits
  - o Follow-up NEST visits
  - o Outpatient Lactation Consults
  - o New Moms' Support Group
- Number of mothers receiving safe sleep information and education
- Breastfeeding rates at:
  - o Discharge
  - o Two months
  - o Four months
  - o Six months
- Number of infants receiving Donor Breastmilk after initiation
  - o Percentage of all patients
  - o Percentage of those infants requiring supplementation



The respondent rate for answering phone call surveys from NEST staff amongst discharged patients are low. Thus NEST relies heavily on the Pediatricians' charting during the infants' follow-up Well Baby appointments in the clinic. This data, however, is limited and not ideal for identifying what barriers exist to breastfeeding or other pertinent data beyond the infant's feeding type. The NEST believes that by modifying its data collection techniques by moving to an anonymous, online survey will address the current barrier it is facing gathering data from delivering mothers. At each program evaluation point the number of survey respondents will be compared against the deliveries during that period.

Lastly, due to its participation in the mPINC survey and with the potential designation as a Baby Friendly Hospital, NIH will know that it has fulfilled the Surgeon General's Call to Action to Support Breastfeeding, succeeded in implementing the BFHI's 10 Steps Successful Breastfeeding, and is providing the gold standard in maternity care.

**Scope of Work**

Initiate 4 hour NEST shift on Saturday and Sunday	May 2018
Baby Friendly accreditation survey	May 2018
Select 1 employee to complete IBCLC training	July 2018
Select 2 employees to complete Lactation Educator training	July 2018
Childbirth classes to be held bi-monthly. Format will rotate between weekend one-day sessions and multi-week evening sessions	Ongoing through life of project
Weekly Moms' Support Group	Ongoing through life of project
Provide Halo sleep sacks and safe sleep education to all patients	Ongoing through life of project
Participation in World Breastfeeding Month (table at Breastfeeding Walk)	August 2018 and annually
Quarterly report of NEST data	Quarterly
Development of new data collection methods (will be captured in new Electronic Health Record)	September 2018
Develop outreach and marketing material for Moms' Support Group	November 2018
Develop outreach and marketing material for Childbirth classes	November 2018
Implement Donor Breastmilk Program (Staff education, patient education and program initiation)	January 2019
Review NEST Gift bag contents and update	February 2019
California Breastfeeding Coalition Conference attendance- 2	February 2019 and annually



<b>attendees</b>	
<b>Research, develop and implement improved Safe Sleep educational program</b>	<b>April 2019</b>
<b>Select 1 employee to complete IBCLC training</b>	<b>July 2019</b>
<b>Select 2 employees to complete Lactation Educator training</b>	<b>July 2019</b>
<b>Anticipated BFHI Renewal</b>	<b>July 2019 and annually</b>
<b>Select 1 employee to complete Childbirth Educator Training</b>	<b>July 2019</b>
<b>Select 1 employee to complete IBCLC training</b>	<b>July 2020</b>
<b>Select 2 employees to complete Lactation Educator training</b>	<b>July 2020</b>
<b>Select 1 employee to complete Childbirth Educator Training</b>	<b>July 2020</b>
<b>International Lactation Consultant Association Conference- 1 attendee</b>	<b>July 2020</b>

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND Northern Inyo Hospital**  
**FOR THE PROVISION OF Childbirth Education and Breastfeeding Support SERVICES**

**TERM:**  
**FROM:** July 1, 2018 **TO:** June 30, 2021

**SCHEDULE OF FEES:**

For services satisfactorily rendered, and upon receipt of quarterly invoices, the County agrees to compensate the Contractor for annual expenditures in an amount not to exceed \$24,000, with the full contract expenditures incurred from July 1, 2018 to June 30, 2021 in an amount not to exceed \$72,000.

Actual program and equipment costs are to be invoiced to First 5 Inyo County after service delivery on a quarterly basis, 30 days after the last day of the quarter, listed below. Indirect costs are not to exceed 15% of the total contracted amount. Expenditures should not deviate from the proposed budget categories by more than \$2,500 without the express written permission of the First 5 Inyo Commission.

Notwithstanding paragraph 3 E, Billing and Payment, quarterly invoices with attached expenditure sheets, fiscal receipts, and related evaluation materials should be received by First 5 Inyo no later than 15 days after the due dates listed below.

In the event that invoices or evaluation materials are late, the First 5 Inyo Commission retains the right to withhold payment until satisfactory receipt and review of those materials has taken place. Habitual tardiness over two or more due dates in provision of such agreed invoices or evaluation data, is cause for the First 5 Inyo Commission to review this contract for reduction or cancelation.

**Due Date:**

<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
November 1, 2018	November 1, 2019	November 1, 2020
February 1, 2019	February 1, 2020	February 1, 2021
May 1, 2019	May 1, 2020	May 1, 2021
August 1, 2019	August 1, 2020	August 1, 2021

Grant Funding Request 2018-2019		Hospital In-Kind Funding 2018-2019	
General	Budget year- average	General	Budget year- average
Personnel		Personnel	
Education		Hourly wages to staff NEST 7 days a week	\$121,539
2 RNs to attend California Breastfeeding Summit in 2019	\$950		
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,000		
BFHI Staff Training online for new hires/providers/clinic staff	\$500		
Supplies		Supplies	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700		
Educational materials and supplies for Mom's Support Group	\$1,500		
Travel		Travel	
Travel/room & board for CBS (2 attendees)	\$2,000		
Misc		Misc	
Marketing	\$1,500	Marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,000		
Freezer for Donor breastmilk	\$3,800		
		BFUSA Annual Fee	\$1,300
<b>Totals:</b>	<b>\$24,000</b>	<b>Totals:</b>	<b>\$125,839</b>



Grant Funding Request 2019-2020		Hospital In-Kind Funding 2019-2020	
General	Budget yearly-average	General	Budget yearly-average
Personnel		Personnel	
Education		Education	
2 RNs to attend California Breastfeeding Summit in 2020	\$950	Hourly wages to staff NEST 7 days a week	\$121,539
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,500		
Childbirth Educator training for 1 staff RN	\$1,500		
BFHI Staff Training online for new hires/providers/clinic staff	\$500		
Supplies		Supplies	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
New Moms' Support Group supplies and materials	\$1,500		
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700		
Travel		Travel	
Travel/room & board for CBS (2 attendees)	\$2,000		
Misc		Misc	
Marketing	\$1,500	marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,500		
BFUSA Annual Fee	\$1,300		
Totals:	\$24,000	Totals:	\$124,539

Grant Funding Request 2020-2021	Budget yearly-average	Hospital In-Kind Funding 2020-2021	Budget yearly-average
<b>General</b>		<b>General</b>	
Personnel		Personnel	
		Hourly wages to staff NEST 7 days a week	\$121,539
<b>Education</b>		<b>Education</b>	
2 RNs to attend CA Breastfeeding Summit in 2019	\$950		
1 RN to attend International Lactation Consultant Association (ILCA) Conference in 2020	\$900		
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,500		
Childbirth Educator training for 1 staff RN	\$1,500		
BFI Staff Training online for new hires/providers/clinic staff	\$500		
<b>Supplies</b>		<b>Supplies</b>	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
Prenatal Education Kit (\$12/person based on 225 deliveries per year)	\$2,700		
<b>Travel</b>		<b>Travel</b>	
Travel/room & board for ILCA Conference (1 attendee)	\$2,000		
Travel/room & board for CBS (2 attendees)	\$2,000		
<b>Misc</b>		<b>Misc</b>	
Marketing	\$600	Marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,000		
BFUSA Annual Fee	\$1,300		
<b>Totals:</b>	<b>\$24,000</b>	<b>Totals:</b>	<b>\$124,539</b>

**ATTACHMENT C**  
**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND Northern Inyo Hospital**

**FOR THE PROVISION OF** Childbirth Education and Breastfeeding Support **SERVICES**

**TERM:**

**FROM:** July 1, 2018

**TO:** June 30, 2021

**SEE ATTACHED INSURANCE PROVISIONS**

## **Specifications 2**

### **Insurance Requirements for Professional Services**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

***(Not required if consultant provides written verification it has no employees)***

1. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence.

If the Consultant maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

#### **Other Insurance Provisions**

**The insurance policies are to contain, or be endorsed to contain, the following provisions:**

##### ***Additional Insured Status***

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

### ***Other Insurance Provisions***

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### ***Primary Coverage***

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

#### ***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

#### ***Waiver of Subrogation***

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

#### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

#### ***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

#### ***Verification of Coverage***

Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete,

certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

***Special Risks or Circumstances***

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Grant Funding Request 2020-2021	Budget yearly-average	Hospital In-kind Funding 2020-2021	Budget yearly-average
<b>General</b>		<b>General</b>	
<b>Personnel</b>		<b>Personnel</b>	
		Hourly wages to staff NEST 7 days a week	\$121,539
<b>Education</b>		<b>Education</b>	
2 RNs to attend CA Breastfeeding Summit in 2019	\$950		
1 RN to attend International Lactation Consultant Association (ILCA) Conference in 2020	\$900		
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,500		
Childbirth Educator training for 1 staff RN	\$1,500		
BFHI Staff Training online for new hires/providers/clinic staff	\$500		
<b>Supplies</b>		<b>Supplies</b>	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700		
<b>Travel</b>		<b>Travel</b>	
Travel/room & board for ILCA Conference (1 attendee)	\$2,000		
Travel/room & board for CBS (2 attendees)	\$2,000		
<b>Misc</b>		<b>Misc</b>	
Marketing	\$600	Marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,000		
BFUSA Annual Fee	\$1,300		
<b>Totals:</b>	<b>\$24,000</b>	<b>Totals:</b>	<b>\$124,539</b>

Grant Funding Request 2019-2020		Hospital In-kind Funding 2019-2020	
General	Budget yearly-average	General	Budget yearly-average
Personnel		Personnel	
		Hourly wages to staff NEST 7 days a week	\$121,539
Education		Education	
2 RNs to attend California Breastfeeding Summit in 2020	\$950		
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,500		
Childbirth Educator training for 1 staff RN	\$1,500		
BFHI Staff Training online for new hires/providers/clinic staff	\$500		
Supplies		Supplies	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
New Moms' Support Group supplies and materials	\$1,500		
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700		
Travel		Travel	
Travel/room & board for CBS (2 attendees)	\$2,000		
Misc		Misc	
Marketing	\$1,500	marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,500		
BFUSA Annual Fee	\$1,300		
Totals:	\$24,000	Totals:	\$124,539



Grant Funding Request 2018-2019		Hospital In-Kind Funding 2018-2019	
General	Budget year- average	General	Budget year- average
Personnel		Personnel	
		Hourly wages to staff NEST 7 days a week	\$121,539
Education		Education	
2 RNs to attend California Breastfeeding Summit in 2019	\$950		
Certified Lactation Educator (2 employee)	\$1,300		
Lactation Consultant certification (1 employee)	\$1,000		
BFHI Staff Training online for new hires/providers/clinic staff	\$500		
Supplies		Supplies	
Birth Prep (\$10/person based on 225 deliveries per year)	\$2,250	General medical supplies in NEST	\$2,000
NEST gift Bag (\$20/person based on 225 deliveries per year)	\$4,500		
Prenatal Education kit (\$12/person based on 225 deliveries per year)	\$2,700		
Educational materials and supplies for Mom's Support Group	\$1,500		
Travel		Travel	
Travel/room & board for CBS (2 attendees)	\$2,000		
Misc		Misc	
Marketing	\$1,500	Marketing	\$1,000
Milk Bank Donor Breastmilk Program	\$2,000		
Freezer for Donor breastmilk	\$3,800		
BFUSA Annual Fee	\$1,300		
Totals:	\$24,000	Totals:	\$124,539



Inyo County First 5 Grant Proposal  
Beyond NEST  
May 2018

**NARRATIVE**

**Executive Summary**

History, Mission, and Purpose

Northern Inyo Healthcare District (NIHD) is a 25 bed, Critical Access Hospital located in Bishop, California. It has been owned and operated by the Northern Inyo County Local Hospital District since its creation in 1946 under The Local Health Care District Law, Division 23, §32000 of the California Health and Safety Code. NIH has been accredited by the Joint Commission on Accreditation of Healthcare Organization (JCAHO) for over 40 years. NIH provides safety-net medical care to communities in Inyo and Mono counties, including Bishop, Wilkerson, Laws, Round Valley, 40 Acres, Big Pine, Paradise, Swall Meadows, Starlite, Aspendell, Mammoth Lakes, Benton, Hammill Valley, Chalfant, Independence, Lone Pine, Shoshone, Tecopa, as well as to visitors traveling through the region along highway 395 (the only connector between San Bernardino and Reno), and to several small communities in surrounding rural Nevada. The mission of Northern Inyo Healthcare District is "Improving our Communities one life at a time. One Team. One Goal. Your Health!" Northern Inyo Hospital's services include inpatient and outpatient services, 24-hour emergency services, ICU, orthopedic and general surgery, labor and delivery, pediatrics, family medicine, internal medicine, a Rural Health Clinic, radiology, laboratory, and physical therapy departments, among others. NIH has a state of the art, on-campus Imaging Center which offers and holds accreditations through the American College of Radiology for Magnetic Resonance Imaging, Mammography, Breast Magnetic Resonance Imaging, Ultrasound, Computed Tomography, and Nuclear Medicine. NIH is a contracted provider under Medicare, Medi-Cal and various commercial insurance programs, and also provides care to Charity Care patients in order to promote the public health and general welfare of the residents of northern Inyo County.

Past and Ongoing Organizational Accomplishments

Since establishment in 2015, the Newborn Evaluation Support & Teaching (NEST) Program has continued to provide evidence-based, best practices and education related to pregnancy preparation, labor, and breastfeeding support to local families. The NEST receives additional funding through grant awards from Inyo County First 5. During this time the NEST has continued and expanded its inpatient and outpatient services, including pre-admission visits, follow-up visits, Lactation Consults, as well as educational and support classes for the community. Additionally, the NEST continues to strive for the highest standards and has been recognized both internally and externally for its work in promoting and supporting breastfeeding and newborn care.

The California Breastfeeding Coalition awarded the NEST a Golden Nugget Award in 2015 for 'Breaking Down the Barrier of Lactation Problems.' As part of the award, the NEST was invited to host a table at the



California Breastfeeding Summit in 2015 to provide attendees with an overview of the NEST program and services.

In 2013, after receiving grant funding from First 5, the Perinatal Department began its journey to become a Baby Friendly accredited hospital. The Baby Friendly Hospital Initiative (BFHI) was started in 1991 by the World Health Organization (WHO) and UNICEF as a global initiative striving to protect, promote, and support breastfeeding. This credential is seen as the gold standard for maternity practices worldwide. In May of 2018, NIHD is excited to welcome the BFHI assessors on campus to audit our practices as well as our care providers, nurses, and patients, with the goal of obtaining BFHI designation.

Of the 50 counties in California, Inyo County was listed by the California WIC Association as having the 8<sup>th</sup> highest exclusive breastfeeding rate in 2015 with a rate of 86.7%. Because NIHD is the only hospital in Inyo County with the facilities to deliver babies, this ranking directly reflects the care and education we provide our Inyo County patients.

NEST's weekly Moms' Support Group facilitated by the NEST Lactation Consultant has been a resource for our postpartum patients not only for breastfeeding support but also as a source of consistent and reassuring support. The NEST works closely with the OB/GYN Clinic, Bishop Pediatric clinic, and Toiyabe Indian Health Clinic to ensure the Moms' Support Group is part of the plan of care for patients at risk or diagnosed with postpartum depression/anxiety. We have seen a surge in attendance this past year and have received positive feedback from our participants.

The NEST Childbirth classes, offered in both English and Spanish, have been well received and the pregnant mothers and their birth coaches report the comprehensive education prior to delivery greatly assists in preparation for childbirth and breastfeeding, as well as eases anxiety about the process. Additionally, the classes allow them to meet other families and expectant parents and form a cohort of support that carries through into the postpartum Moms' Support Group. The NEST collaborates with the childbirth educator at Toiyabe Women, Infants, and Children (WIC) to ensure a childbirth class is offered to the community on a monthly basis, thereby increasing community pregnancy preparation. The NIHD classes have been offered as both one-day as well as multi-week sessions, thereby providing scheduling options and serving the various needs of our patients.

The NEST follows up with all delivered patients about their experience and breastfeeding practices. When completing these follow-up phone calls, the NEST routinely receives positive feedback from our patients, including statements such as "I never could have breastfed without the NEST," and "I wouldn't be breastfeeding now (at 3 months) if I didn't have the Moms' Support Group in those early days when everything felt so overwhelming." Receiving this type of feedback reinforces the important role the NEST plays in our community.

**Project Goals & Outcomes**



The NEST and NIHD are looking forward to ways to expand and improve our services for our community, specifically by increasing our breastfeeding rates, expanding NEST staffing, and increasing awareness of and access to educational and support services.

In an effort to further increase our rate of exclusively breastmilk-fed newborns, the NEST is seeking to establish a pasteurized Donor Breastmilk Program for high risk infants who have a medical indication to be supplemented. Approximately 17% of newborns delivered at NIHD require supplementation due to medical need during the first few days of life. Our current practice with these infants involves utilizing the mother's own breastmilk, and if that is not adequate, providing formula until the medical indication has resolved or mother's milk production has increased and can replace formula supplementation. The importance of feeding newborns solely breastmilk is reflected in the scientific studies that point to the increased risk in disease, illness and allergies with the introduction of even a small amount of formula during the first few days of life. Additionally, when supplementing with formula, even if medically indicated, the mother is more likely to continue supplementing with formula after the medical indication has resolved, thereby decreasing the maternal and infant benefits of exclusively breastfeeding as well as increasing the risk of early weaning. By implementing the Donor Breastmilk Program at NIHD, we would be able to provide our newborns with optimal nutrition, thereby increasing their health not only while they are young and vulnerable but also throughout their lives. Based on 2017 data, the Donor Breastmilk Program would potentially bring our rate of exclusively breastfed infants from 82% to 98%. NIHD would become the only hospital in the Eastern Sierra providing this exceptional service, and would join a group of progressive healthcare institutions providing optimal care for high risk newborns through a Donor Breastmilk Program. Implementing donor breastmilk programs is endorsed by the American Academy of Pediatrics, The World Health Organization, The Center for Disease Control and Prevention, Academy of Breastfeeding Medicine, Academy of OBGYN, Academy of Family Physicians, amongst other reputable organizations.

The next objective will be to expand the delivery of NEST services. This will be accomplished by the addition of a NEST shift for RNs with lactation training on Saturday and Sunday. Currently the NEST is staffed Monday through Friday by the two dedicated NEST RNs and Perinatal RNs work in the NEST on the weekends. These defined hours and staff during the week have improved patient access to breastfeeding support. However, on the weekend, because the Perinatal RNs are also expected to manage labor and delivery patients on the Perinatal Unit, they often are required to balance the one-on-one nature of a NEST appointment while also caring for patients on the floor. The new four hour weekend NEST shift will enable the same depth and quality of NEST visits on weekends as are provided during the week.

The next goal focuses upon improving access to our services, specifically our Childbirth Classes and Mom's Support Group. To achieve this, the NEST will research marketing strategies to promote these opportunities for our pregnant and postpartum patients. We wish to have more participants in our Spanish Childbirth Classes specifically and plan to utilize our Perinatal RN who is a Certified Lactation Educator and leads the Spanish Childbirth classes in outreach to the Hispanic community. We have flyers for these services throughout NIHD's campus as well as at Toiyabe WIC, Downtown WIC and First 5. Marketing through the



Inyo Register as well the local radio station are additional strategies we have not recently employed. Currently the Mom's Support Group meets at NIHD's facility located at Birch St. While this location is suitable, the NEST will research options to improve the comfort of the facility for our postpartum moms. We currently obtain breastfeeding statistics after discharge from the hospital through patient phone calls. During this time, we also strive to obtain information regarding barriers to breastfeeding in addition to any barriers to attending the Childbirth classes and Mom's Support Group. However, due to the difficulty in reaching our patients as well as the potential issue of honest feedback, we have found the follow-up phone calls to not be successful. We look forward to the implementation of NIHD's new computer system to improve capture of this information by the Pediatricians during Well Baby exams. This information will be invaluable for quality improvement of the NEST program.

### **Project Evaluation & Indicators**

The key objectives this project seeks to achieve will be measured through data collection from the following areas:

- Increased exclusive breastfeeding rate upon discharge through Donor Breastmilk Program
- Increased participation and access to Childbirth classes, specifically the Spanish Childbirth Class
- Increased access to community support for breastfeeding through improved marketing of Moms' Support Group
- Increased respondent rate for data collection
- Collection of breastfeeding barriers
- mPINC scores
- Designation and maintenance as Baby Friendly Hospital

NEST will continue to utilize the NEST Pillars of Excellence to assess breastfeeding rates upon discharge and formula supplementation by maternal request or medical indication. The implementation of the Donor Breastmilk Program will enable parents to ensure their infants receive only breastmilk even if it is medically indicated to supplement.

NEST initiated childbirth classes in March of 2017. Since inception, 16% of mothers delivering at NID have gone through these classes, with only one mother attending the Spanish-language Childbirth class. As we continue to systematically measure the rate of mothers and their birth coaches attending childbirth classes prior to delivery, we will look for improvement at each of the program evaluation points including improved marketing. The participation in childbirth classes will be tracked at the time the patient is admitted to the Perinatal Unit through the admission assessment.

NEST offers a weekly Moms' Support Group that originally was rarely utilized by postpartum women. Participation increased in the Fall of 2017 with attendance varying each week. The participation in the support group will be tracked and reviewed by NEST staff.



The respondent rate for answering phone call surveys from NEST staff amongst discharged patients are low. Thus NEST relies heavily on the Pediatricians' charting during the infants' follow-up Well Baby appointments in the clinic. This data, however, is limited and not ideal for identifying what barriers exist to breastfeeding or other pertinent data beyond the infant's feeding type. The NEST believes that by modifying its data collection techniques by moving to an anonymous, online survey will address the current barrier it is facing gathering data from delivering mothers. At each program evaluation point the number of survey respondents will be compared against the deliveries during that period.

Lastly, due to its participation in the mPINC survey and with the potential designation as a Baby Friendly Hospital, NIH will know that it has fulfilled the Surgeon General's Call to Action to Support Breastfeeding, succeeded in implementing the BFHI's 10 Steps Successful Breastfeeding, and is providing the gold standard in maternity care.

**Scope of Work**

Initiate 4 hour NEST shift on Saturday and Sunday	May 2018
Baby Friendly accreditation survey	May 2018
Select 1 employee to complete IBCLC training	July 2018
Select 2 employees to complete Lactation Educator training	July 2018
Childbirth classes to be held bi-monthly. Format will rotate between weekend one-day sessions and multi-week evening sessions	Ongoing through life of project
Weekly Moms' Support Group	Ongoing through life of project
Provide Halo sleep sacks and safe sleep education to all patients	Ongoing through life of project
Participation in World Breastfeeding Month (table at Breastfeeding Walk)	August 2018 and annually
Quarterly report of NEST data	Quarterly
Development of new data collection methods (will be captured in new Electronic Health Record)	September 2018
Develop outreach and marketing material for Moms' Support Group	November 2018
Develop outreach and marketing material for Childbirth classes	November 2018
Implement Donor Breastmilk Program (Staff education, patient education and program initiation)	January 2019
Review NEST Gift bag contents and update	February 2019
California Breastfeeding Coalition Conference attendance- 2	February 2019 and annually



<b>attendees</b>	
Research, develop and implement improved Safe Sleep educational program	April 2019
Select 1 employee to complete IBCLC training	July 2019
Select 2 employees to complete Lactation Educator training	July 2019
Anticipated BFHI Renewal	July 2019 and annually
Select 1 employee to complete Childbirth Educator Training	July 2019
Select 1 employee to complete IBCLC training	July 2020
Select 2 employees to complete Lactation Educator training	July 2020
Select 1 employee to complete Childbirth Educator Training	July 2020
International Lactation Consultant Association Conference- 1 attendee	July 2020



# County of Inyo



## Planning Department

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Cathreen Richards

**SUBJECT:** Alabama Hills Management Plan Environmental Assessment Draft Comment Letter

---

**RECOMMENDED ACTION:**

Request Board receive a presentation from staff regarding the Bureau of Land Management's (BLM) Alabama Hills Management Plan Environmental Assessment (EA) and a draft comment letter; provide comments; and potentially authorize the Chairperson to sign and direct staff to submit the comment letter.

**SUMMARY/JUSTIFICATION:**

The BLM is preparing a management plan for the Alabama Hills. The management plan will implement the Orders - Increasing Recreation Opportunities on Lands and Waters Managed by the U.S. Department of the Interior and the Conservation Stewardship and Outdoor Recreation. The plan will also address regulations and guidelines for both the newly designated National Scenic Area (NSA) and Special Recreation Management Area (SRMA) designated lands located in the management area. Staff has prepared a Draft comment letter (Attached) responding to the Environmental Assessment (EA) (<https://eplanning.blm.gov/eplanning-ui/project/1502669/570>).

The plan will focus on specific uses, resource values and future management strategies for the plan area. The information provided for by the EA will be used by the BLM to complete the plan. The EA includes evaluations of Alternatives in relation to the specific resources of:

- Recreation
- Scenic
- Cultural, Historical and Cinematographic
- Geological
- Biological
- Fuels Management and Wildland Fire
- Livestock grazing
- Land and Realty
- Interpretation, Education, Partnerships and Science.

There are three Alternatives in the EA. This includes a no Action alternative that keeps the status quo. The other two Alternatives 1 and 2 provide for varying intensity in management strategies. These include:

- Alternative 1: Recreation uses would be managed with minimal development to reduce impacts to other resources and values of the NSA and SRMA. A suite of planned management strategies and site-specific actions to conserve, protect, and enhance recreational and other resources and values of the NSA and SRMA would be identified and implemented in a manner that balances recreational and non-recreational resources and values.



- Alternative 2: Recreation uses would be intensively managed in a more developed setting to reduce impacts to other resources and values of the NSA and SRMA. A suite of planned management strategies and site-specific actions to conserve, protect, and enhance the resources and values of the NSA and SRMA would be identified and implemented with increased emphasis on non-recreational resources and values.

The County sent scoping comments to the BLM in December, 2019 (Attached) and has met with BLM staff to discuss the issues important to the County. Comments previously shared with the BLM include:

- Maintain multiple use access in the project area.
- Pay special attention to the visual resources in and into the area, especially with regard to the current planning for electrical transmission conveyance in the area.
- Evaluate proposed management decisions with the potential effects on local economies as they are closely tied to tourism.
- Use the County's General Plan for reference to County policies addressing: access, recreation, economy and energy generation and conveyance, as well as, other topics that are relevant to the planning effort.

Alternative 1 is most aligned with the County's comments and consistent interests in lands managed by Federal agencies since it continues to allow for a wider array of multiple uses, especially with regard to recreation opportunities than Alternative 2 (Alabama Hills EA pages 9-37, Description of Alternatives-attached). A brief comparison of highlights of the two Alternatives that correspond with the comment letter includes:

### **Overnight Use**

Alternative 1 proposes to designate 65 dispersed campsites and would require free permits for use of the sites. Currently, there are 126 inventoried dispersed campsites scattered around the Alabama Hills with little to no oversight. Issues regarding parking, garbage, the proliferation of fire rings, and improper human waste disposal have caused the need to address these sites. Alternative 2 takes an approach of heightened management of overnight use, by eliminating all dispersed camping and creating a new designated campground.

### **Infrastructure, Health and Safety Facilities**

Alternative 1 proposes the addition of up to 3 toilet, trash and recycling locations in the planning area. Alternative 2 adds 2 locations to this for a total of up to 5 if monitoring determines it is needed.

### **Special Recreation Permits (SRP)**

Alternative 1 would continue to have no annual limits on SRPs, until such time that impacts to resources are seen. Then the SRPs would go to a lottery system. There would be limits on how many participants per day in certain locations to help reduce possible user conflicts. Alternative 2 would cap the number of SRPs to 20 to maintain the current average, or lower, before implementing a lottery system. The daily caps on participants per location would be the same as Alternative 1.

### **Lands and Realty – Section 368 Corridor**

Alternative 1 requires proponent funded feasibility studies for any proposed energy corridor in the planning area. If the study determines that the corridor is infeasible, the BLM will amend the Bishop RMP to eliminate the 368 corridor from the planning area. Alternative 2 provides for "as time and funding allow, amend the Bishop RMP to eliminate the 368 Energy Corridor Segment (s) within the planning area".

### **Film Permits**

Under Alternative 1, the annual number of film permits allowed would double to 50. They would also be subject to a specified number of participants per day in certain locations. This is the same as what is proposed for the Special Recreation Permits. Alternative 2 caps the number of available film permits to 15 annually.

Alternative 1 better suited to the County's previous scoping comments than Alternative 2 and that is reflected in the draft comment letter. Also included, are suggestions for elements of Alternative 2 being merged with Alternative 1 in the final Alternative. Staff is requesting comments and direction from the Board regarding the

draft comment letter.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board may consider directing changes or adding to the correspondence or not submitting correspondence. Not submitting comments on the EA is not recommended as this is the appropriate avenue for the Board to address the BLM's planning efforts for the Alabama Hills Management Plan.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

**ATTACHMENTS:**

1. Draft EA Comment Letter 8.4.20
2. Maps July 2020
3. Scoping Letter 12.17.19

**APPROVALS:**

Cathreen Richards  
Darcy Ellis  
Cathreen Richards

Created/Initiated - 7/16/2020  
Approved - 7/17/2020  
Final Approval - 7/27/2020



EL CAMINO SIERRA

## BOARD OF SUPERVISORS COUNTY OF INYO

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August 4, 2020

Bureau of Land Management (BLM) – Bishop Field Office  
Attn: Alabama Hills Management Plan  
351 Pacu Lane, Suite 100  
Bishop, CA 93514

RE: Alabama Hills Management Plan

Field Manager Nelson:

On behalf of the Inyo County Board of Supervisors, I would like to thank the BLM for providing the opportunity to submit comments on the Alabama Hills Management Plan, Environmental Assessment (EA). We would also like to extend our appreciation to the BLM for consulting with the County on this planning effort. The Alabama Hills are a very unique and special place within Inyo County and continued visitor access to them is vitally important to the economy of Lone Pine as well as the County as a whole. With these principles in mind, the Board would like to offer the following comments.

Overall, we support and encourage the implementation of Alternative 1 in the development of the Alabama Hills Management Plan, with a few enhancements. These include:

### *Recreation-Overnight Use*

- We support the reduction, by one-half, of the dispersed camping that is currently found haphazardly situated throughout the Alabama Hills. The impacts of this unregulated use are well documented and the need to rein them in is obvious. Conversely, we cannot support the reduction to less than the proposed 65-sites as it would be too much of a loss to a recreation experience preferred by many visitors to the area and could subsequently affect local economies. If monitoring shows the continuation of impacts, a new camp-ground should be created as discussed in Alternative 2 to make up for any loss of the proposed 65-dispersed camping sites. Since the Tuttle Creek campground and the other campgrounds in the general area are not ideally located, a new campground more appropriately sited near high demand destinations would better address impacts.
- The areas identified in the EA for the siting of dispersed campsites also make sense to us. Please take special care in the actual selection of the dispersed campsites to ensure that there is no loss or impacts to areas with day use and/or to filming opportunities.
- A campground as discussed in Alternative 2 should be included in the final Alternative in addition to the 65-proposed dispersed sites. The level of growth in visitation to the Alabama Hills is not likely to subside. This could result in more unregulated/unpermitted dispersed

comping in the Alabama Hills due to a lack of appropriate facilities. It would be far better to plan on the front end for a continued rise in visitation than to have to address even more of the same issues in the future.

- Although we fully support the addition of a new developed campground, the site selected for it (as shown on Map 4) might not be the best location. As pointed out in the EA, this site is equally far from Movie Flats as the Tuttle Creek campground and requires travel by Moffat road (a County road that is difficult to maintain) and would also cause increased traffic on Movie Road (also a County road). We encourage the BLM to evaluate other locations in the Alabama Hills that are more conveniently located to Movie Flat, the primary attraction for visitors, for a new developed campground. For example, an area south of what is colloquially known as Locus Grove or Frog Pond might work. This area is closer to Movie Flats and vehicles can use Whitney Portal (a paved road) to access it. We also recommend that a walking trail connecting the proposed new campground, the Tuttle Creek and Lone Pine Campgrounds, and Movie Flat together be developed. This could help to eliminate some vehicle travel and would be a very nice amenity.

#### *Infrastructure, Health and Safety – Facilities*

- The Board fully supports the addition of up to 5-locations for restroom, trash and recycling services as identified in Alternative 2. With this, we strongly encourage the BLM to install good quality, permanent, toilet facilities and not porta-potties. This will do much to reduce and/or eliminate the problem of human waste currently affecting the Alabama Hills. These locations should also be easy for visitors to find, but not so obvious that they impact visual resources.

#### *Special Recreation Permits (SRPs)*

- With regard to SRPs, we are in support of what is included in Alternative 1. The care and attention that the BLM paid to assigning caps on the number of people per day at specific locations is commendable. We are especially happy to see that there is not a proposal in Alternative 1 to reduce the number of annual permits available. This is extremely important to the local economy, and therefore, to the people who live and work in nearby communities that are reliant on tourism.

#### *Lands and Realty – Section 368 Corridor*

- The Inyo County Board of Supervisors has consistently opposed the inclusion of the section of the 368 Energy Corridor identified in the Alabama Hills. There is an existing utility right-of-way outside of the Scenic Area, located to the east that, in our opinion, should have been identified instead. The realization of large utility structures and lines running through the Alabama Hills would be damaging to the visual resources found there, no matter what Visual Resource Management Classification the area falls under. We would like to see the BLM include, from Alternative 2, Lands and Realty, Action 2, into the final Alternative, the statement: amend the Bishop RMP to eliminate the 368 Energy Corridor Segment (s) within the planning area.

#### *Film Permits*

- Film permits are also very important to the economy of local communities in Inyo County, especially Lone Pine. Having film crews in the area increases the patronage of local businesses and draws more attention to the Alabama Hills and the Sierra, conceivably bringing even more visitors. We are in complete agreement with the doubling of available permits proposed in Alternative 1 for filming. We also appreciate the limits per area, per day, as this will help to alleviate potential landuse conflicts.

In closing, I would like to reiterate that the Board of Supervisors believes that Alternative 1 best recognizes the intent of the Alabama Hills legislation and the hard work put into it over the past 10-years by many local stakeholders. The persistent engagement of these individuals and groups was critical to the passage of the legislation and it is crucial that their effort and input be evident in the management plan. We recognize that the management plan will be a living document that will need to be updated as conditions on the ground dictate. We are also keenly aware that some provisions in Alternative 1 may seem too restrictive to some and not protective enough to others. We find it to be a good starting point, though, as it addresses the wide range of interests inherent to the Alabama Hills.

Sincerely,

Matt Kingsley, Chairperson  
Inyo County Board of Supervisors

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**Alabama Hills Management Plan  
Environmental Assessment  
(July 2020)**

**MAPS**

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*The Bureau of Land Management's mission is to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.*

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## Contents

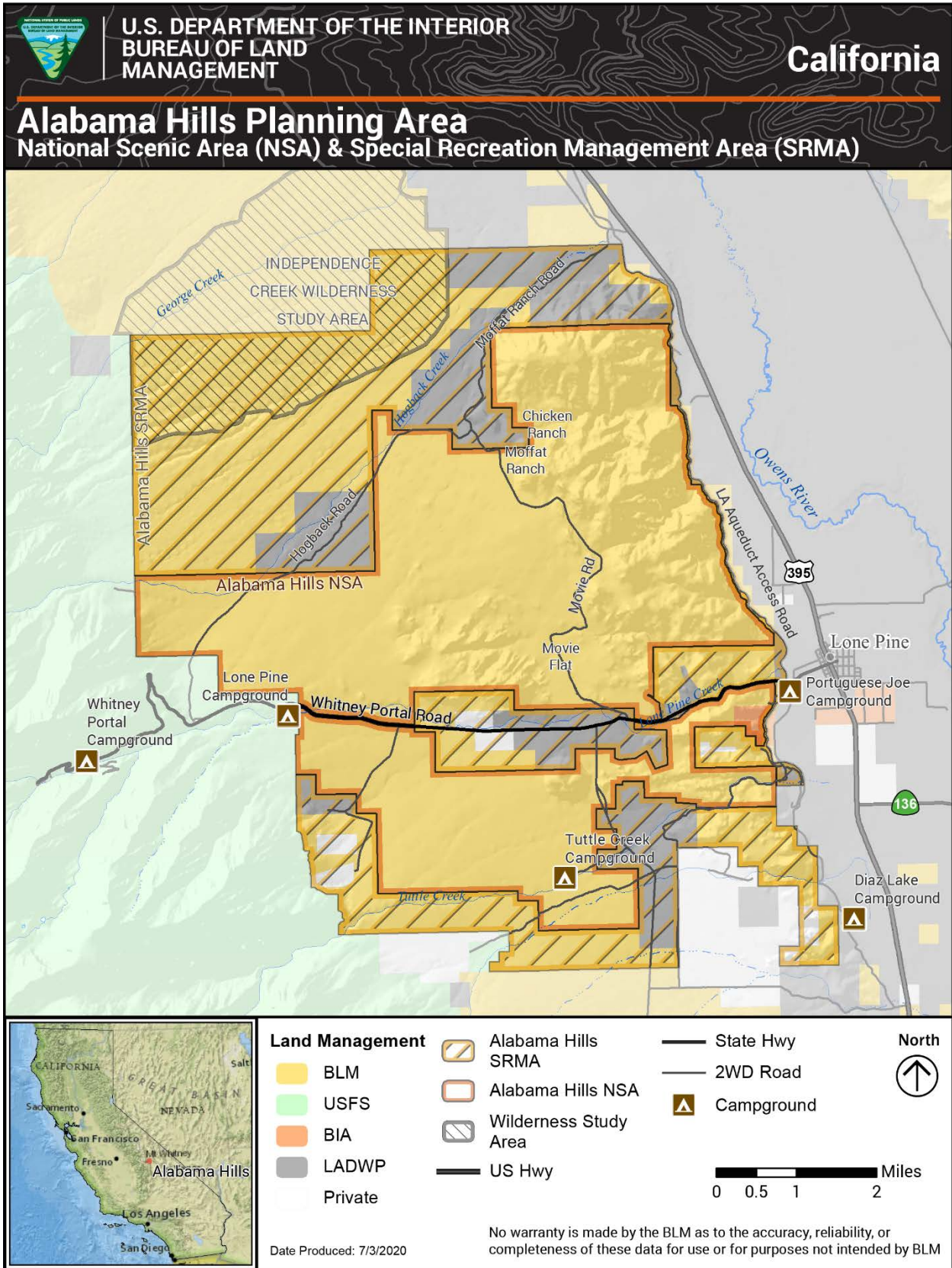
Map 1: Planning Area Overview .....	1
Map 2: Dispersed Camping - No Action Alternative .....	2
Map 3: Designated Dispersed Camping Areas - Alternative 1 .....	3
Map 4: Proposed Developed Campground - Alternative 2 .....	4
Map 5: Rock Climbing Areas .....	5
Map 6: Shooting - No Action and Alternative 1 .....	6
Map 7: Roads, Routes and Trails (Travel Management) - No Action.....	7
Map 8: Roads, Routes and Trails (Travel Management) - Alternative 1.....	8
Map 9: Facilities and Signs - Alternative 1 .....	9
Map 10: Roads, Routes and Trails (Travel Management) - Alternative 2 .....	10
Map 11: Allocated Special Recreation Permit and Film Permit Locations .....	11
Map 12: Proposed Fuels Treatments Alternatives 1 and 2 .....	12
Map 13: Grazing Allotments .....	13
Map 14: Vegetation Types .....	14
Map 15: Fire History 1920 to Present .....	15



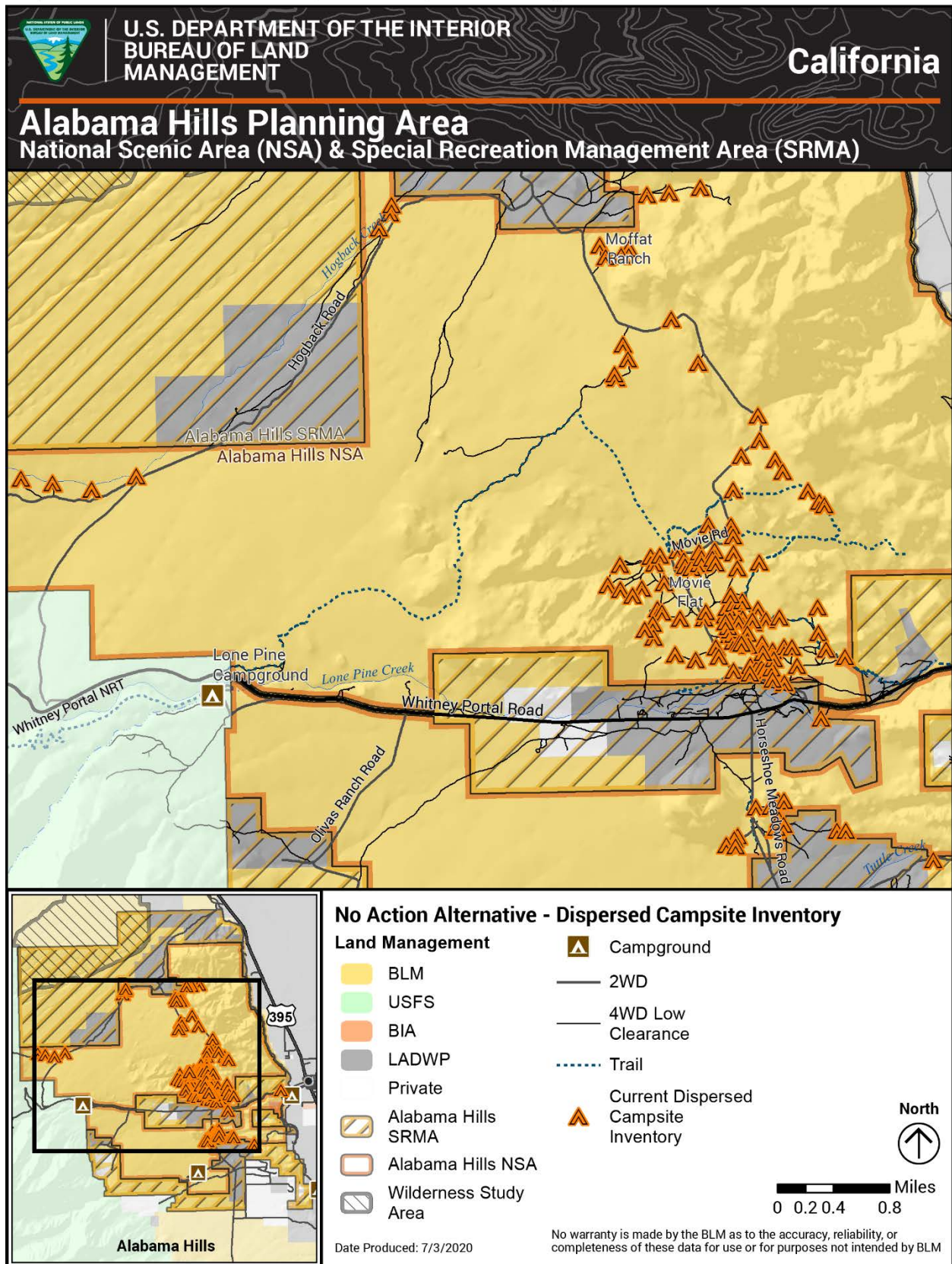
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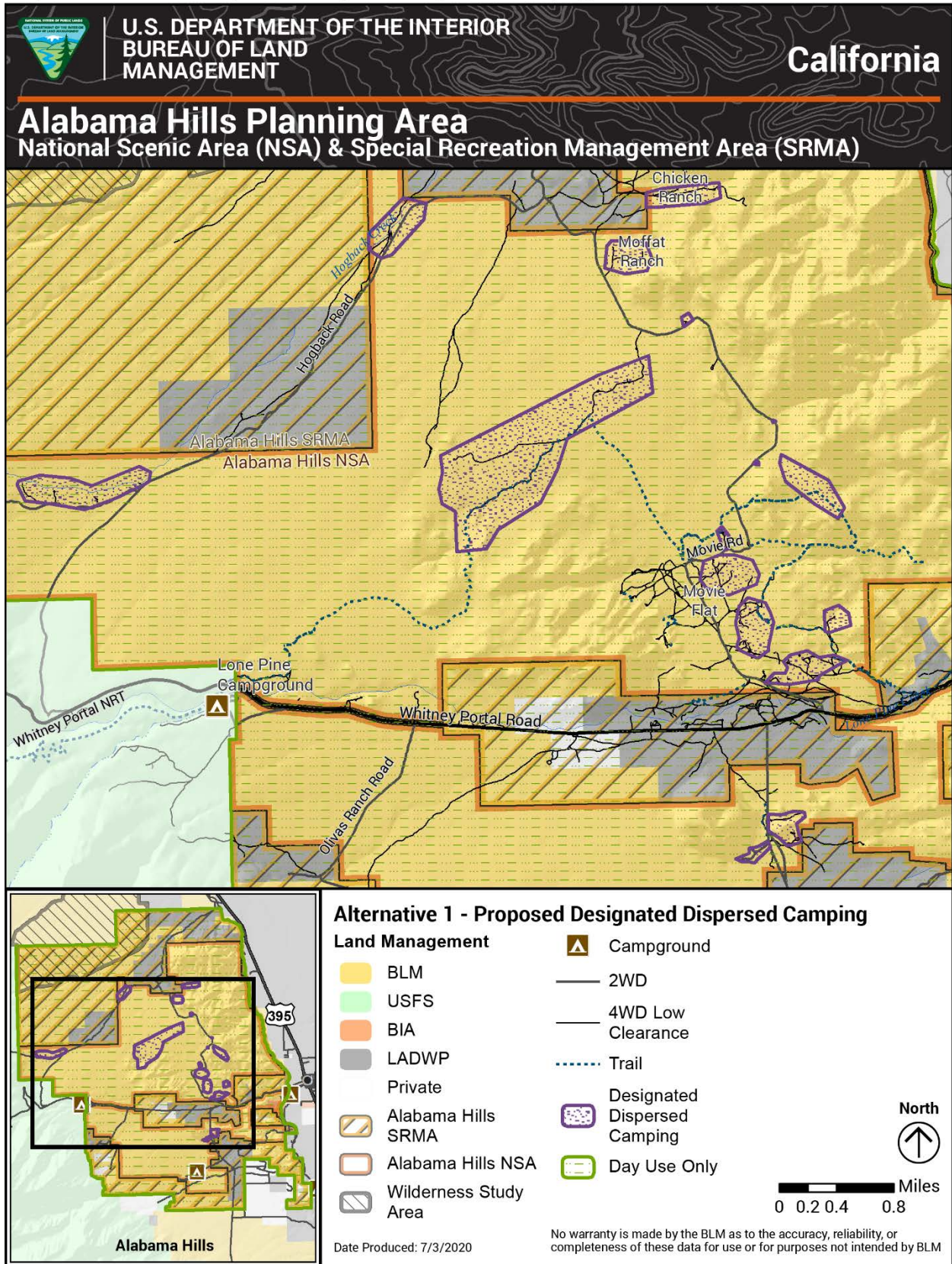
Map 1: Planning Area Overview



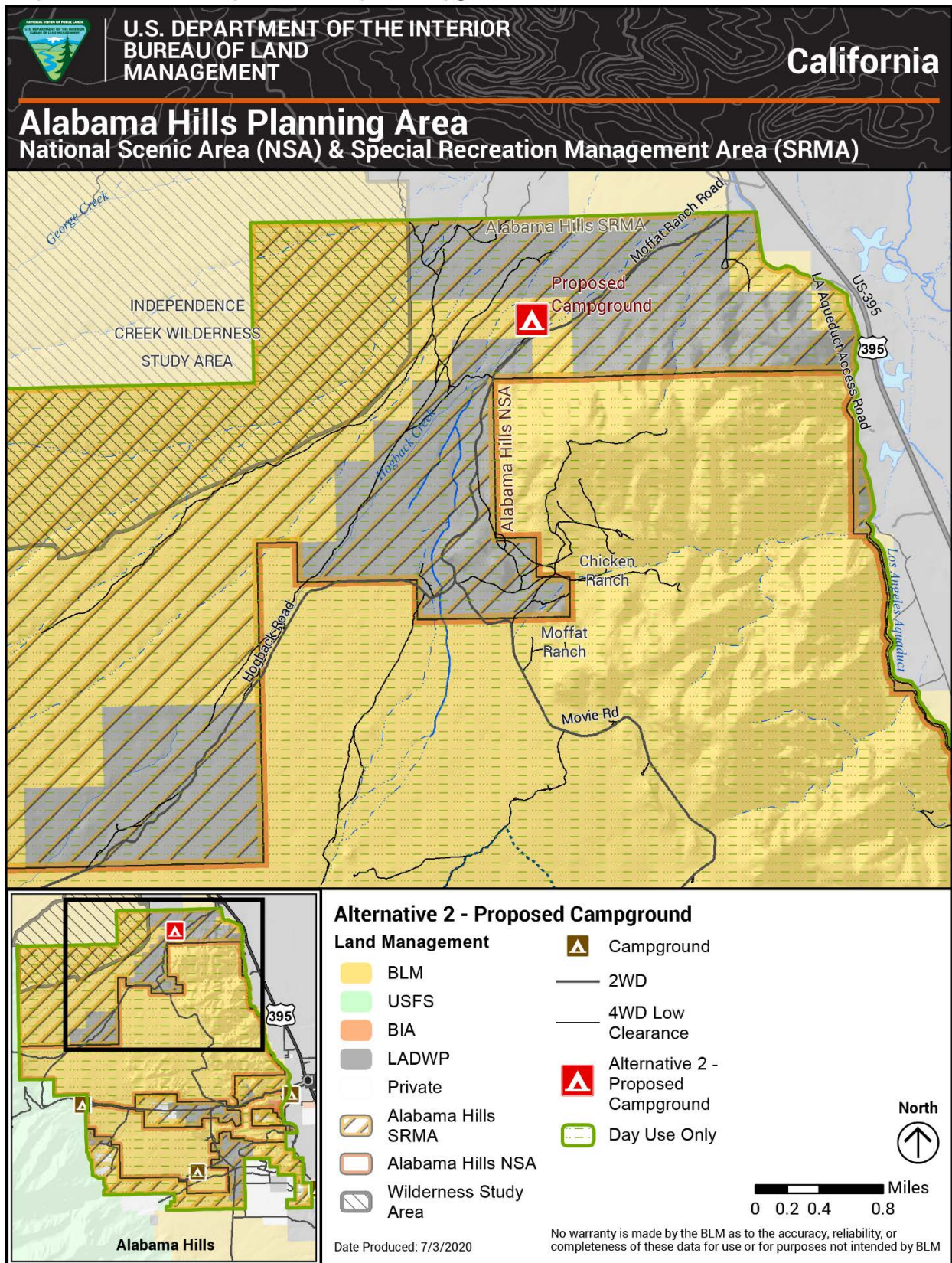
Map 2: No Action Alternative Dispersed Campsite Inventory



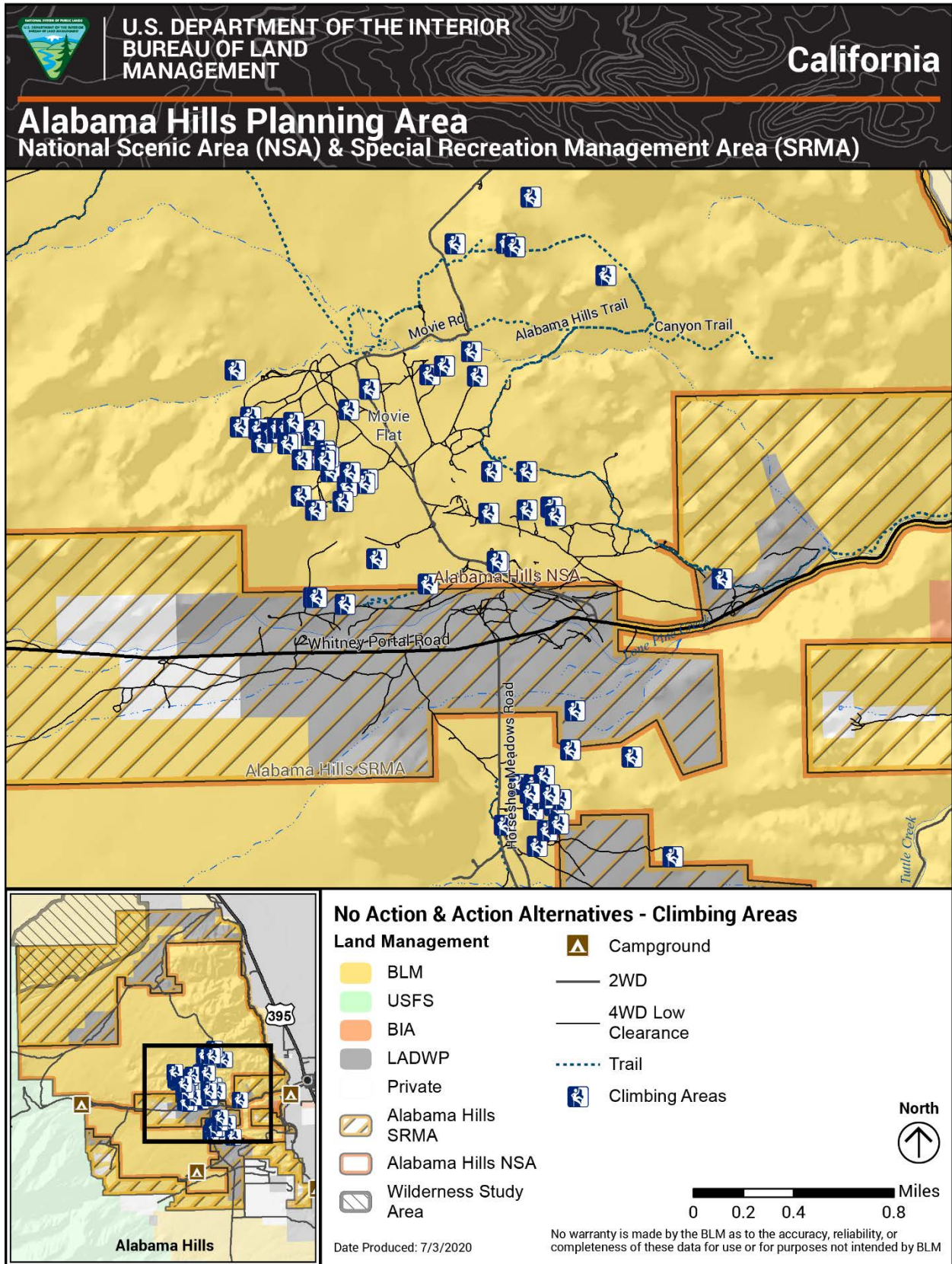
Map 3: Alternative 1 Proposed Designated Dispersed Camping



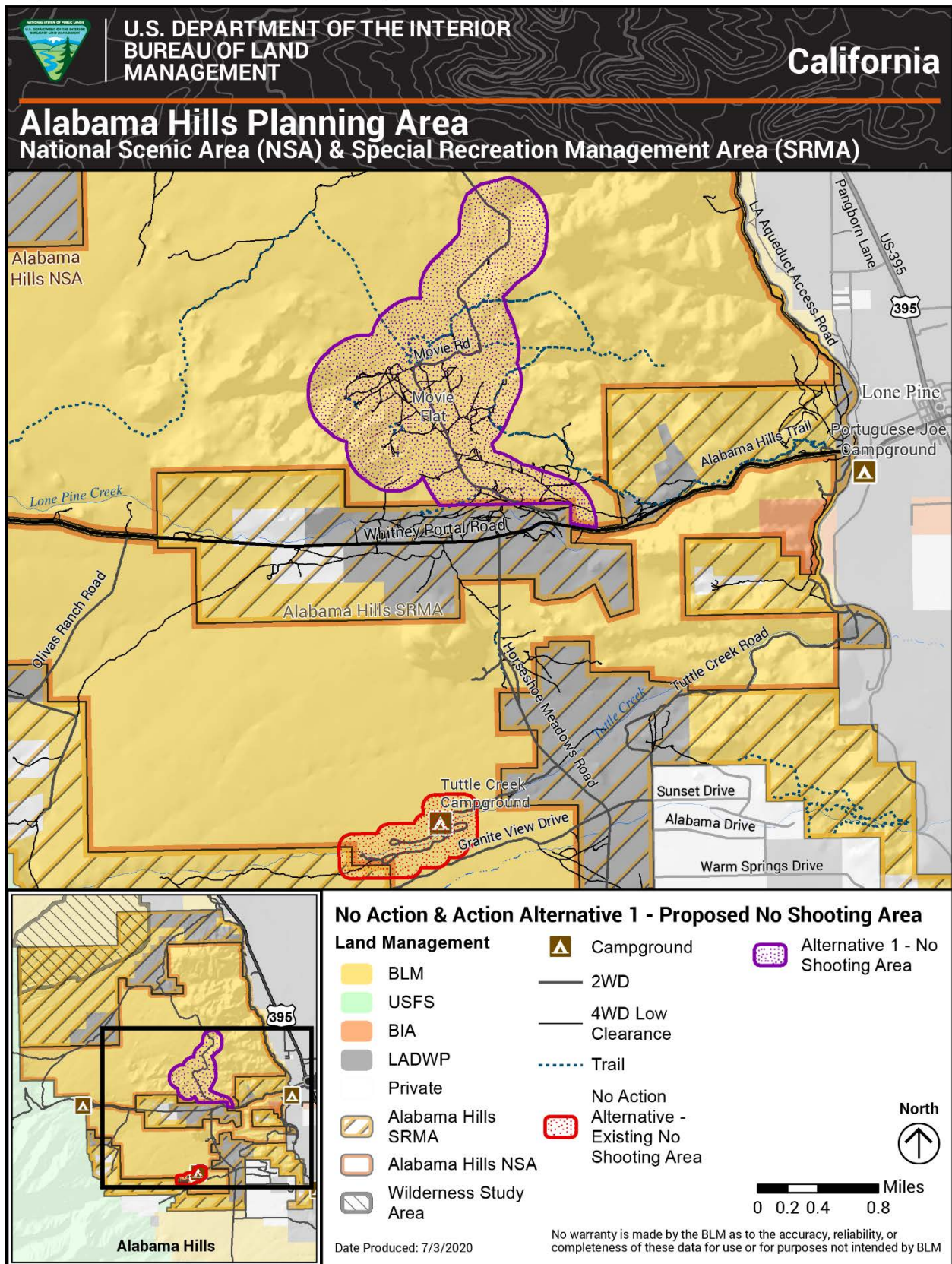
Map 4: Alternative 2 Proposed Developed Campground



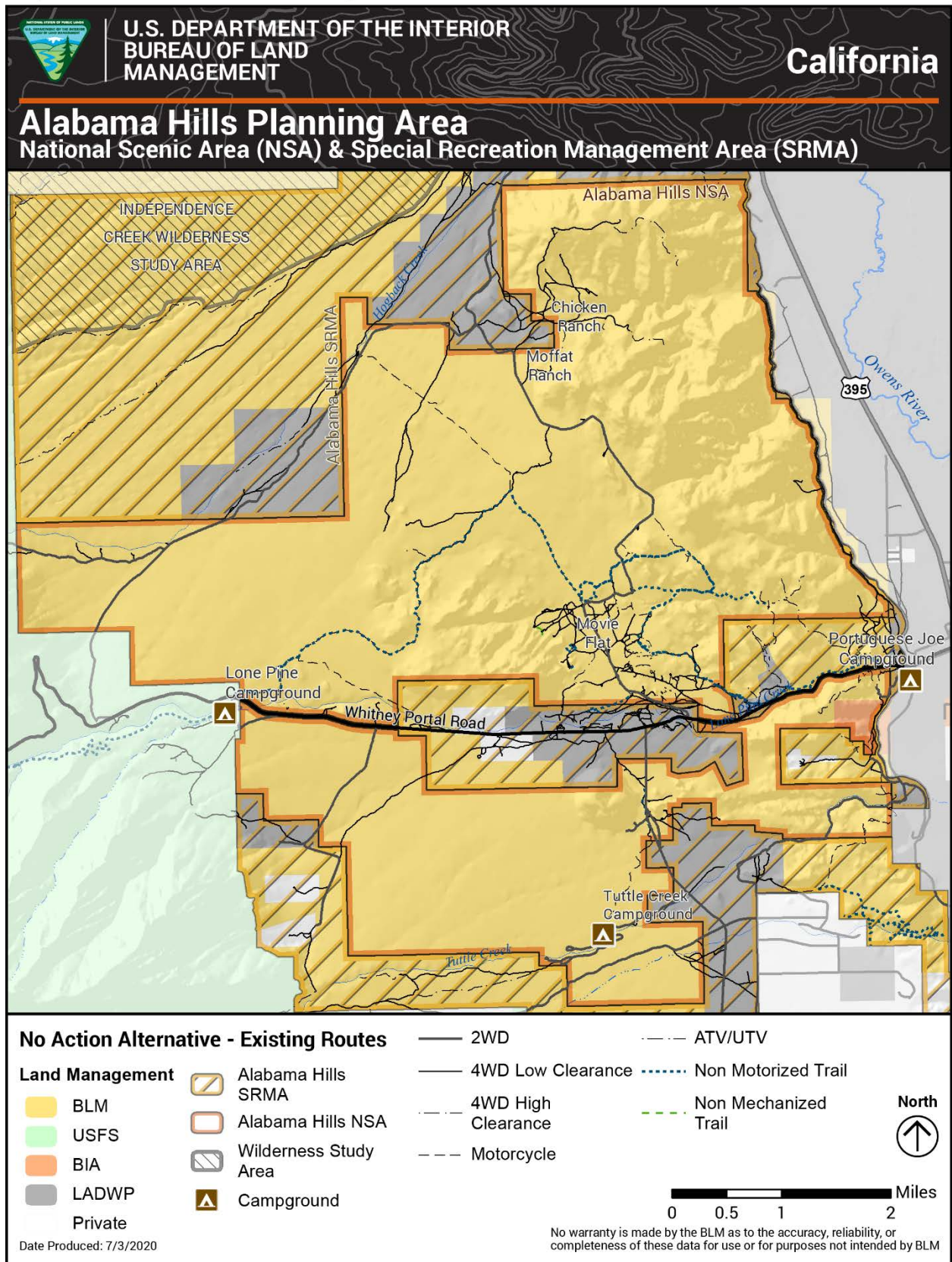
Map 5: No Action and Action Alternatives - Climbing Areas



Map 6: No Action and Alternative 1 - Proposed No Shooting Area

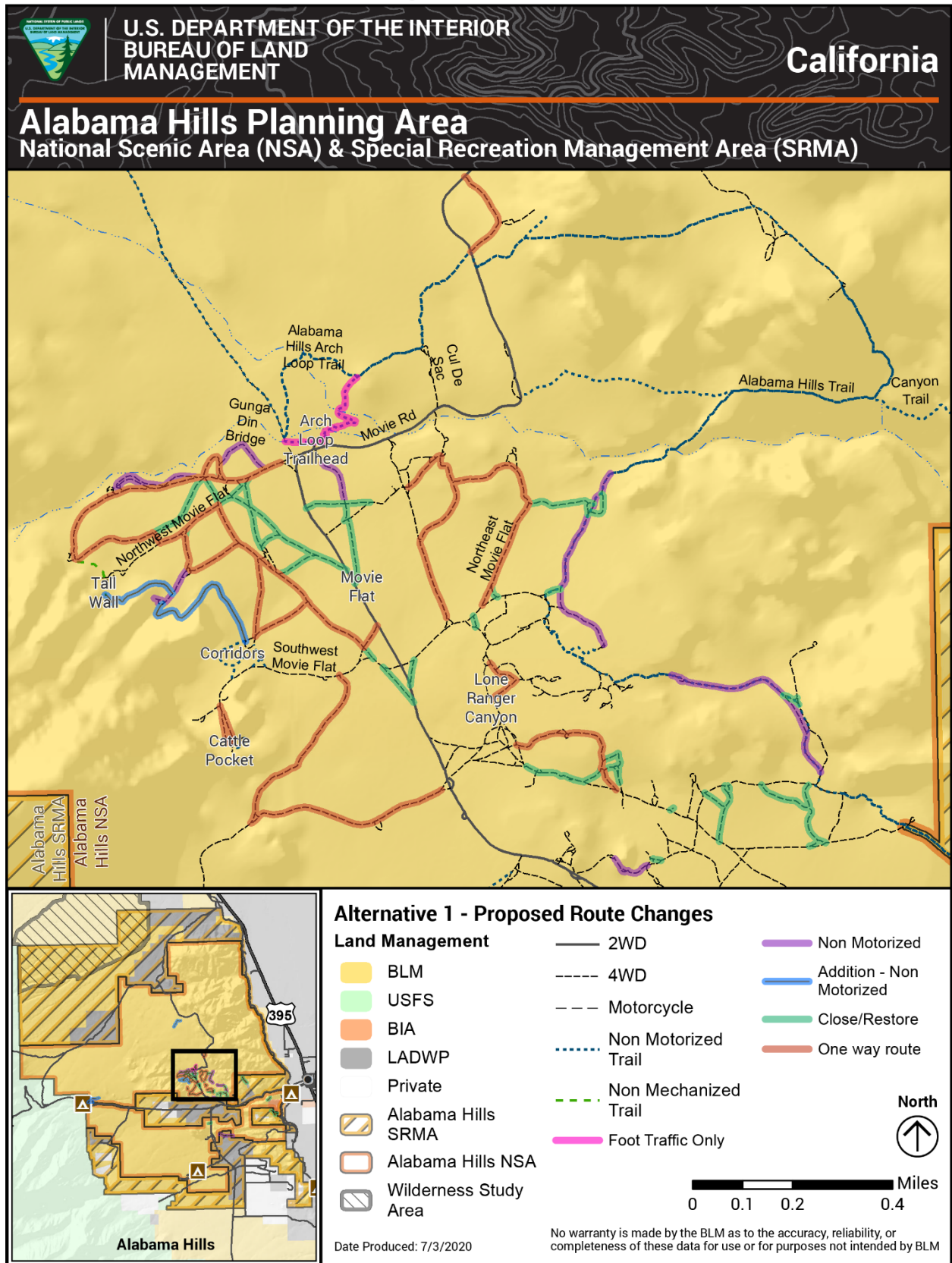


Map 7: No Action Alternative Existing Routes

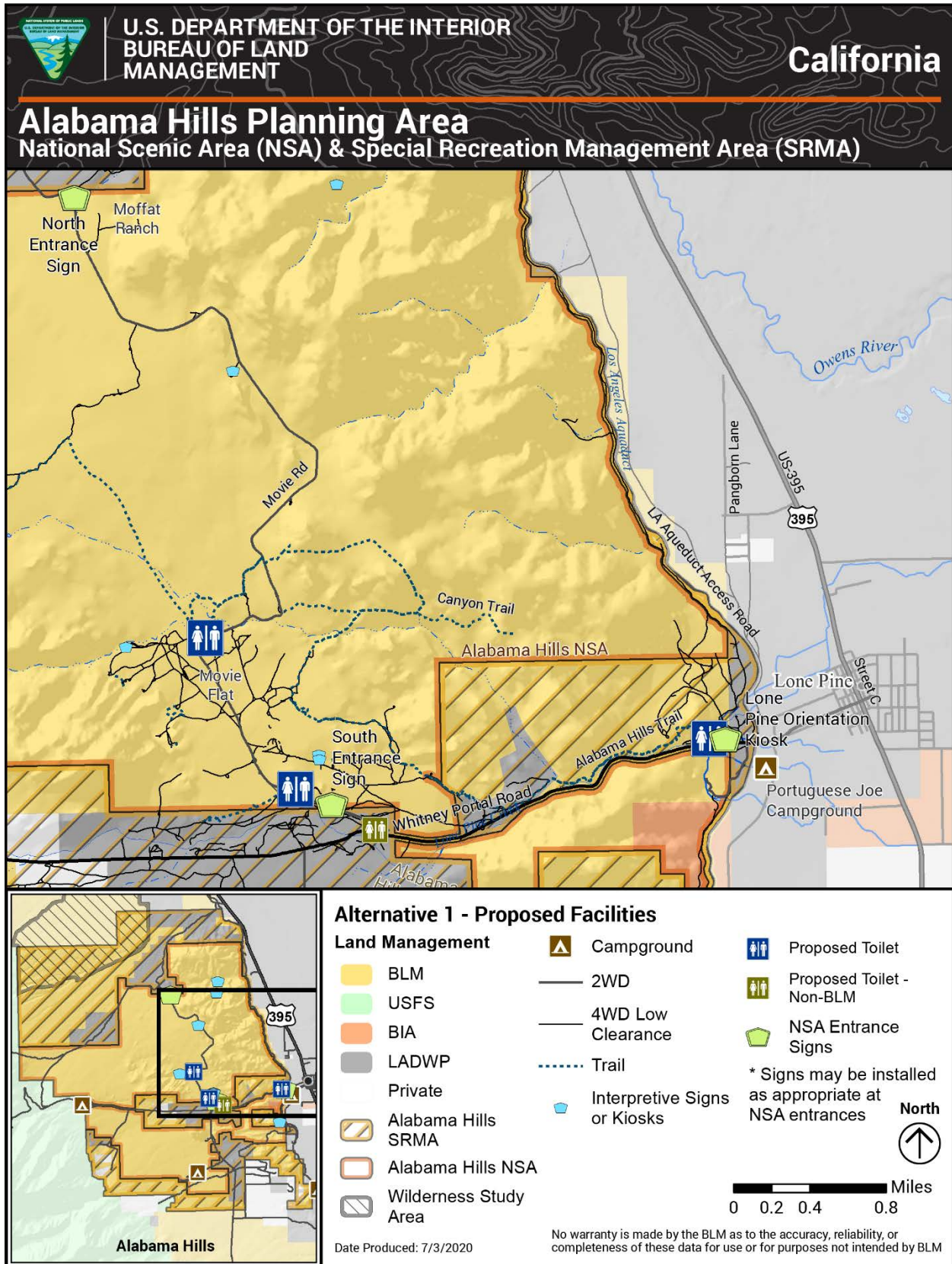




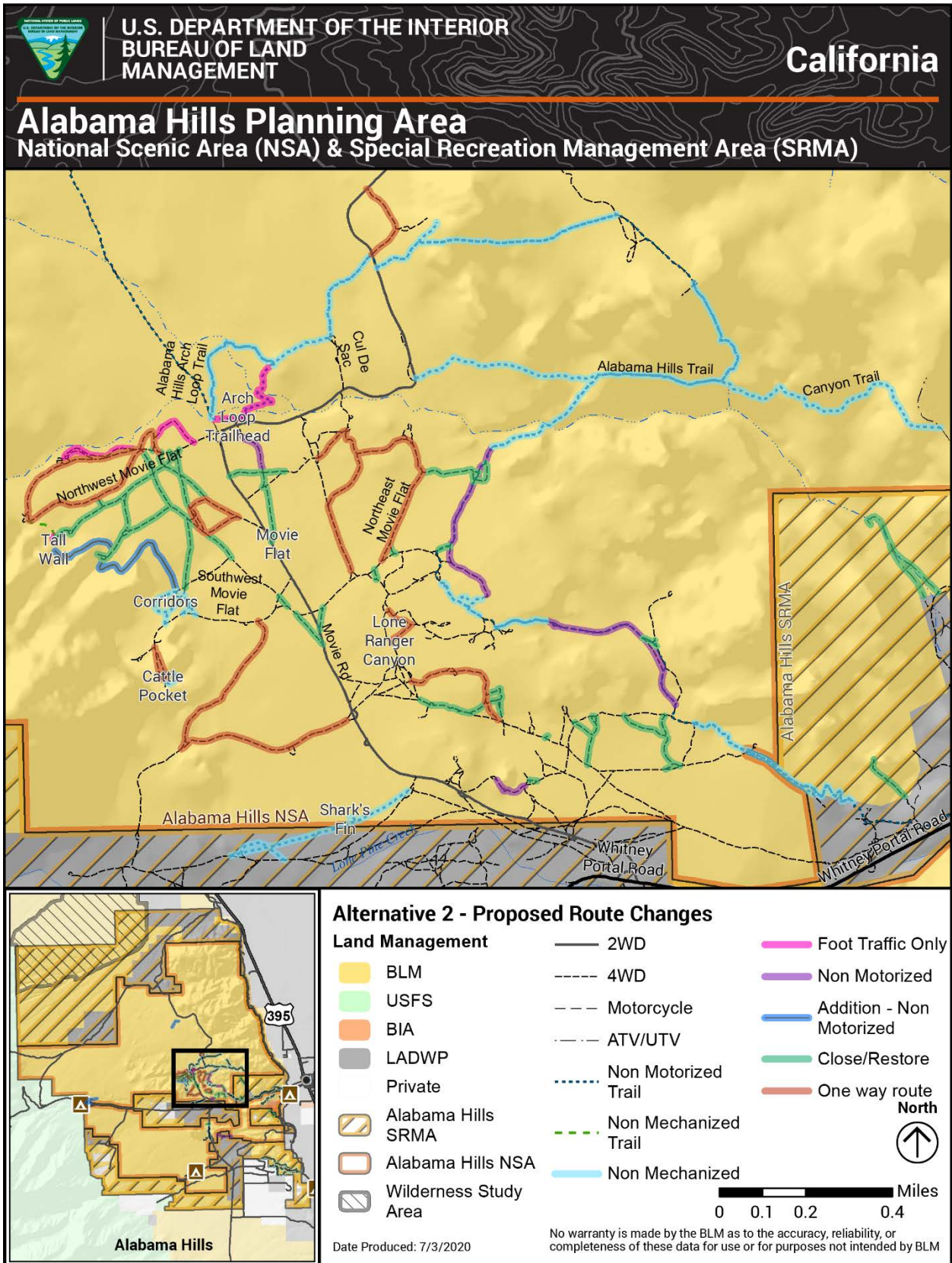
Map 8: Alternative 1 Proposed Route Changes



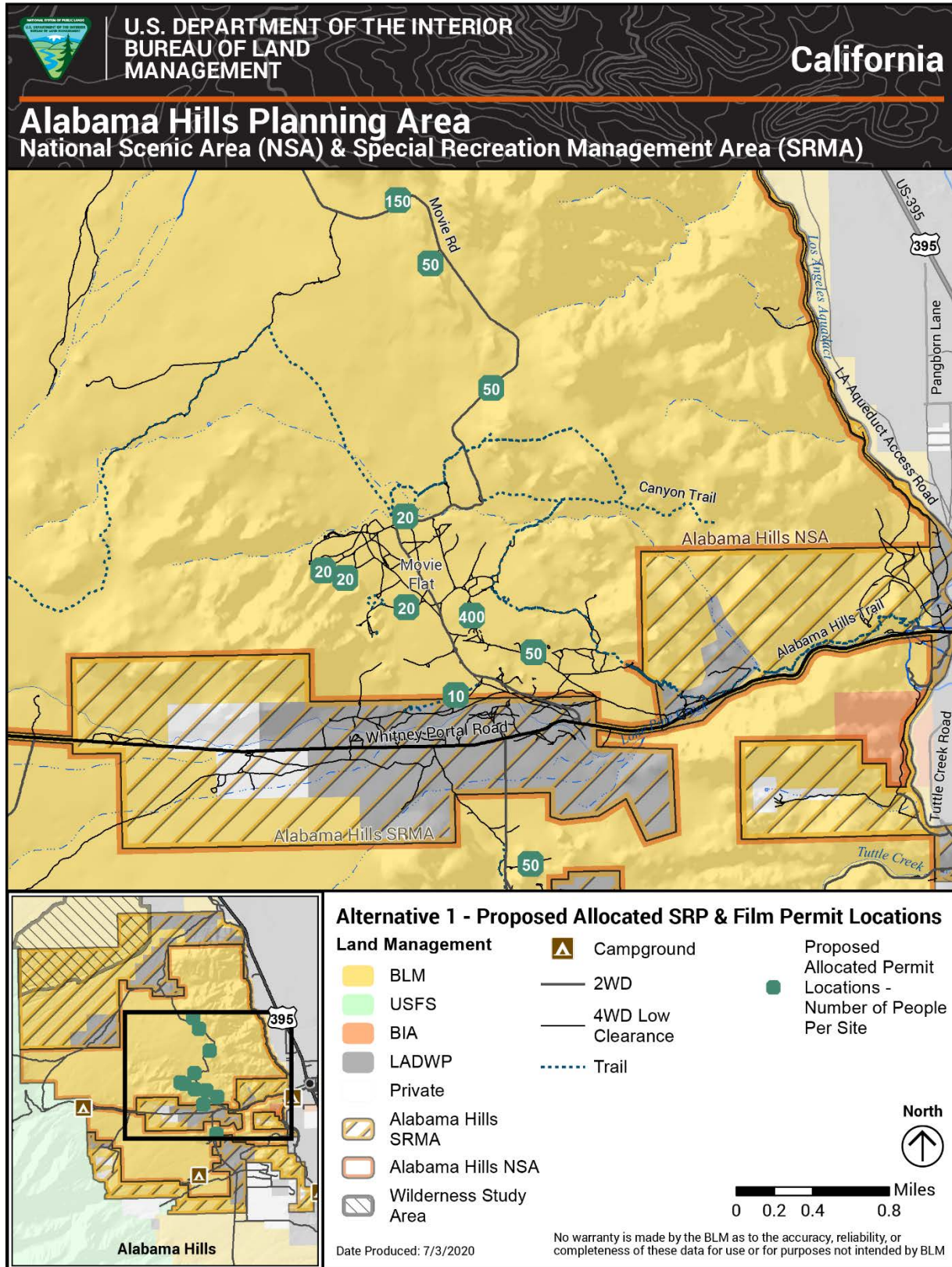
Map 9: Proposed Facilities



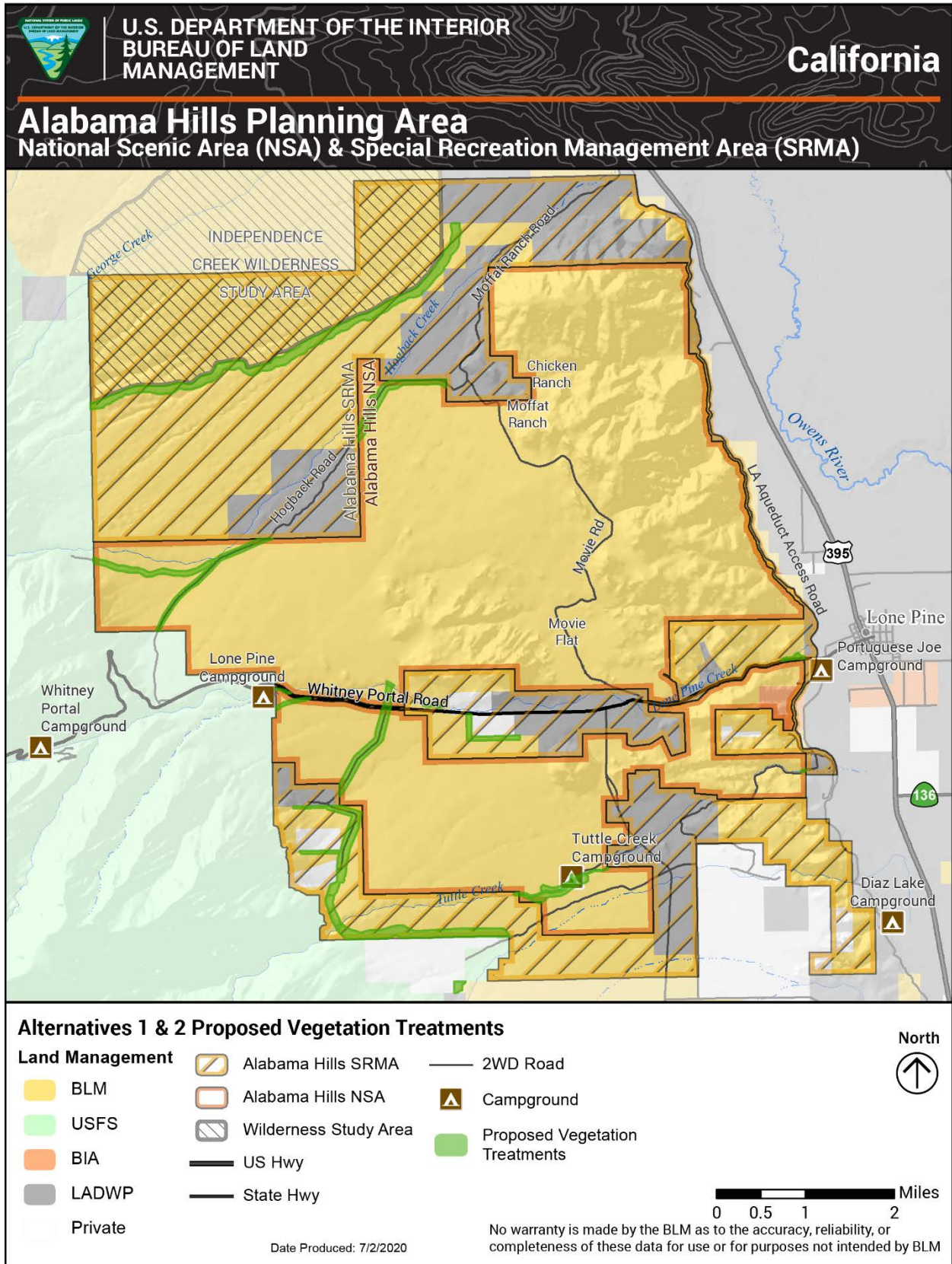
Map 10: Alternative 2 Proposed Route Changes



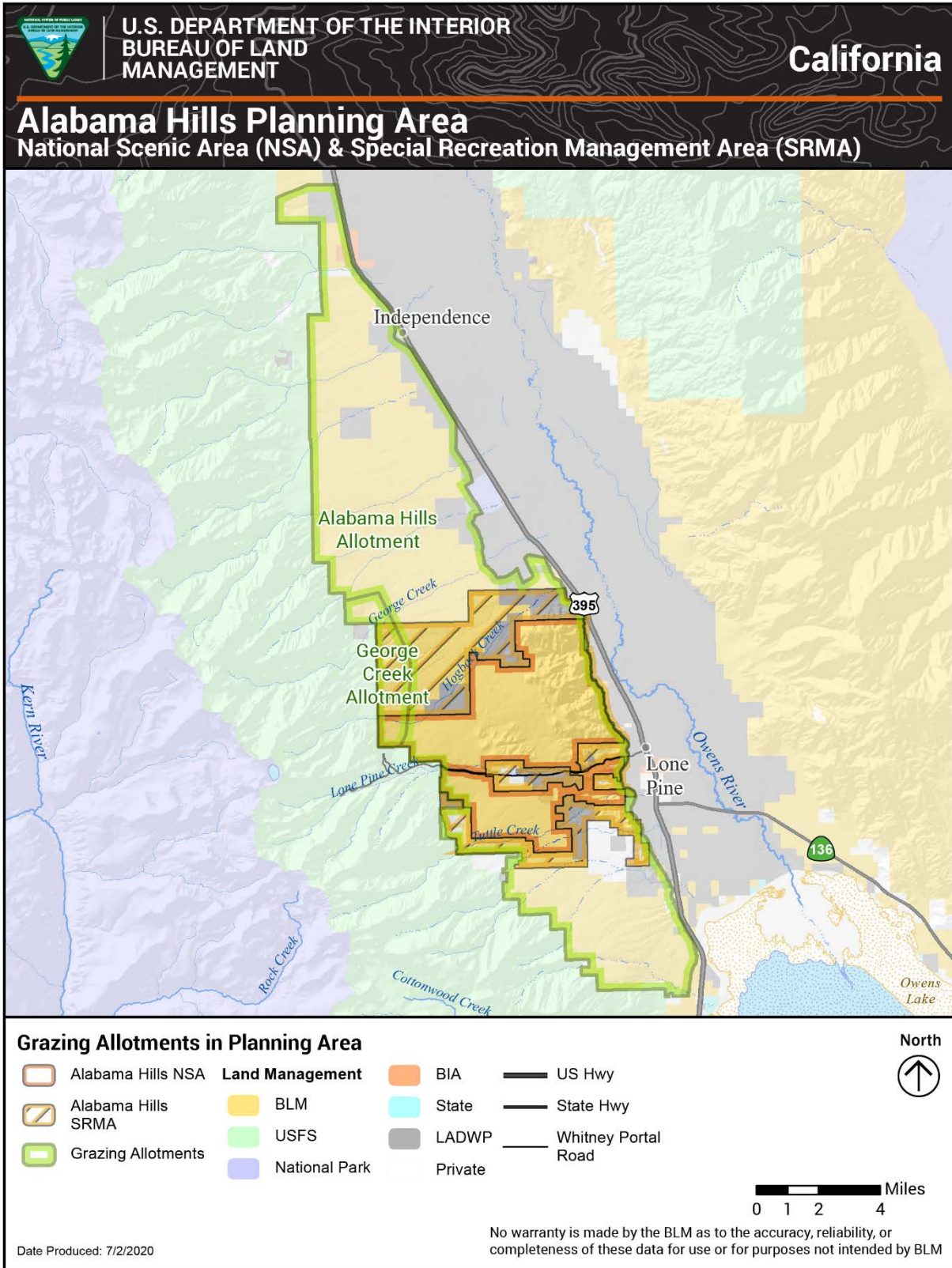
Map 11: Proposed Allocated SRP and Film Permit Locations



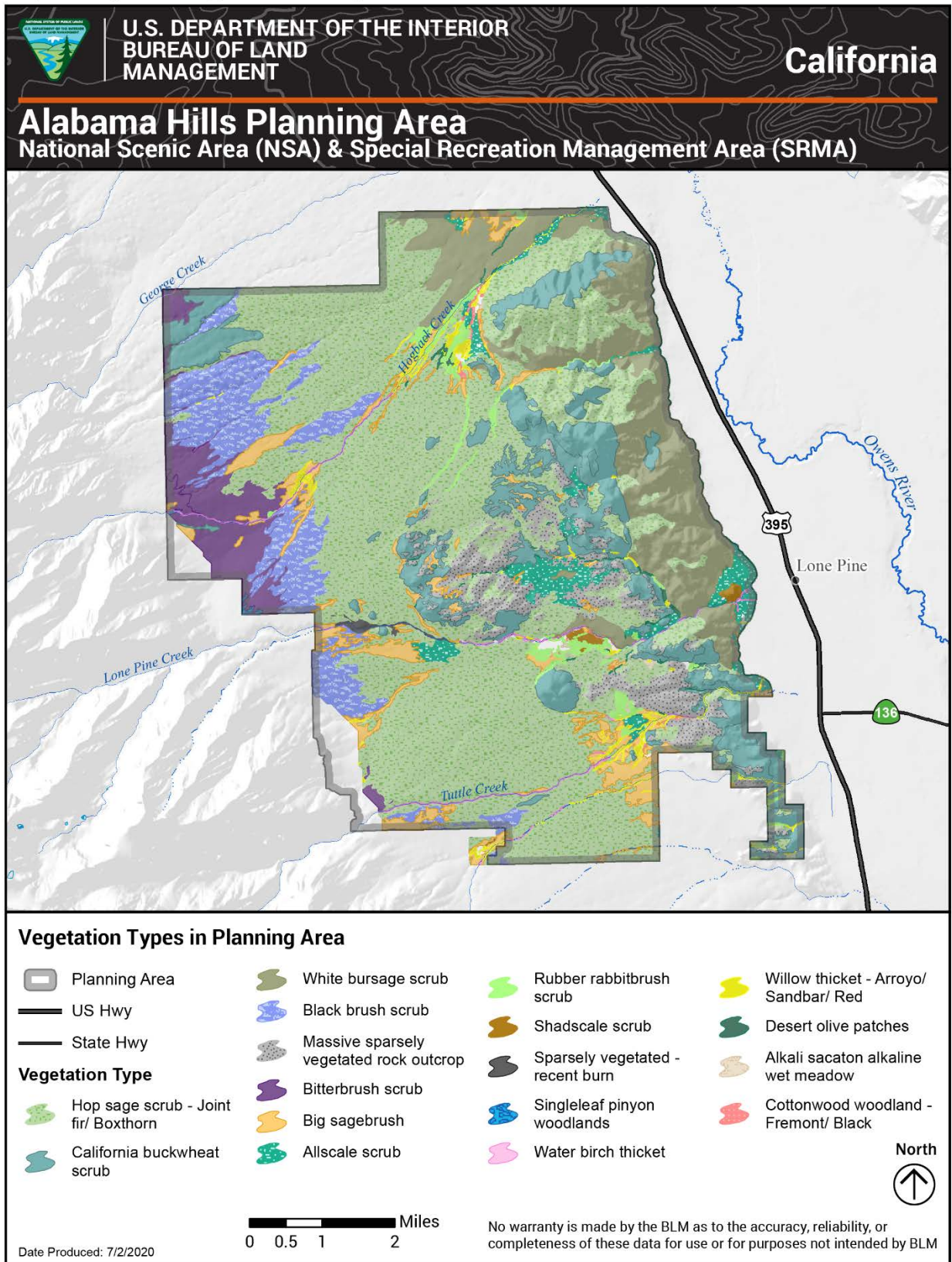
Map 12: Alternatives 1 and 2 Proposed Vegetation Treatments



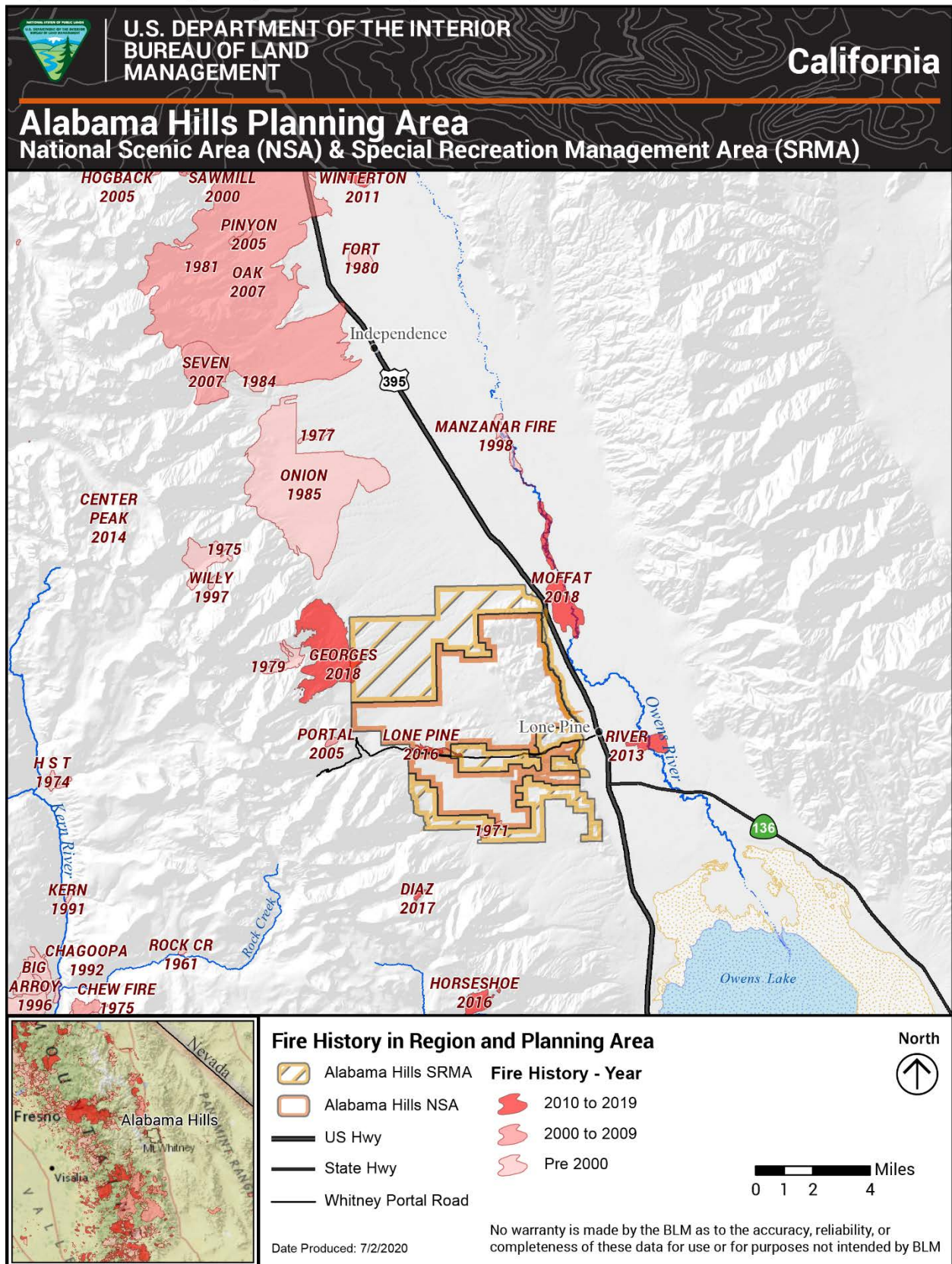
Map 13: Grazing Allotments in Planning Area



Map 14: Vegetation Types in Planning Area



Map 15: Fire History in Region and Planning Area







EL CAMINO SIERRA

BOARD OF SUPERVISORS  
COUNTY OF INYO

P. O. BOX N • INDEPENDENCE, CALIFORNIA 93526  
TELEPHONE (760) 878-0373  
e-mail: dellis@inyocounty.us

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DARCY ELLIS  
*Assistant Clerk of the Board*

December 17, 2019

Bureau of Land Management (BLM) – Bishop Field Office  
Attn: Alabama Hills Management Plan  
351 Pacu Lane, Suite 100  
Bishop, CA 93514

RE: Alabama Hills Management Plan


Field Manager Nelson:

On behalf of the Inyo County Board of Supervisors, I would like to thank the BLM for providing the opportunity to submit scoping comments on the Alabama Hills Management Plan. The County looks forward to consulting with the BLM on this planning effort. The Alabama Hills are a very unique and special place within Inyo County and the Board of Supervisors cannot encourage the BLM enough to treat the area as such throughout this planning process. The Board would also like to offer the following comments.

As you know, Inyo County encourages access to its natural wonders, and to this end, we urge the BLM to strive to maintain multiple use access in the project area. This includes access to existing activities, roads and trails. We also encourage that you to pay special attention to the visual resources in and into the area, especially with regard to the current planning for electrical transmission conveyance in the area. Furthermore, we feel it is essential that the BLM evaluate proposed management decisions with the potential effects on local economies as they are closely tied to tourism. The County's General Plan provides the vision for access, recreation, economy and energy generation and conveyance, as well as, other topics that will be relevant to this planning effort. We strongly suggest the BLM review the County's General Plan at the onset. It can be viewed online at: [http://inyoplanning.org/general\\_plan/goals.htm](http://inyoplanning.org/general_plan/goals.htm). County staff is happy to answer any questions the BLM may have related to General Plan policies.

In closing, I would like to reiterate that the Alabama Hills are one of the most iconic areas in Inyo County and have a prominent place in its history and culture. The Board of Supervisors is excited about being a consulting agency on the Management Plan process for this very special place.

Sincerely,



Rick Pucci, Chairperson  
Inyo County Board of Supervisors

CC:

Supervisor Rick Pucci  
Supervisor Jeff Griffiths  
Supervisor Mark Tillemans  
Supervisor Dan Totheroh  
Supervisor Matt Kingsley  
Clint Quilter, County Administrative Officer  
Carl B. Symons, Field Director, Bureau of Land Management, Ridgecrest Office  
Mary Wuester, Chairperson Lone Pine Paiute Shoshone Tribe



# County of Inyo



## County Administrator - Information Services

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Scott Armstrong

**SUBJECT:** Microsoft Enterprise Enrollment Agreement

---

#### **RECOMMENDED ACTION:**

Request Board ratify and approve the Enterprise Enrollment Agreement between the County of Inyo and Microsoft of Redmond, WA, through their licensing solutions partner Dell, Inc. of Round Rock, TX, for the provision of Microsoft product subscription services in an amount not to exceed \$465,000 for the period of July 1, 2020 through June 30, 2023 (\$155,000 per year for 3 years), contingent upon the Board's approval of future budgets, and authorize the Information Services Director to sign, contingent upon all appropriate signatures being obtained.

#### **SUMMARY/JUSTIFICATION:**

The County of Inyo wishes to enter into an Enterprise Agreement with Microsoft (MS) as an Affiliate Customer under the terms of the Riverside Agreement 8084445 with Microsoft, and enroll in subscription services with Microsoft through their reseller Dell, Inc. The term of this enrollment is 36 months.

The County of Inyo received competitive quotes from 3 of the Microsoft licensing solutions partners awarded for that contract and selected Dell as the vendor.

These subscription services will replace two projects previously planned for FY2019-2020 (MS Office Upgrade - \$160,000, and MS Office Exchange Server Upgrade - \$45,000), as well as the annual Microsoft Desktop Operating System Enterprise software assurance costs (\$26,000).

These subscription services will also enhance our employees' ability to work anywhere, anytime with government-cloud-hosted data and MS Office applications. Additional features with the MS Office 365 subscription services include collaborative online workspaces, web-based video conferencing, mobile device management services, integrated security features, and email filtering and discovery.

The initial phase of this project will require only 50 licenses, and we'll purchase additional licenses over the next few months as we deploy them to the various County Departments.

#### **BACKGROUND/HISTORY OF BOARD ACTIONS:**

#### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose to not approve this request, resulting in a piecemeal approach to desktop application upgrades, cumbersome remote collaboration tools for the County employees, and increasing support challenges with disparate account security and management systems.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

There is sufficient preliminary budget in the Computer Upgrade budget (011808) object code Maintenance of Computer (5177) to cover this contract for Fiscal Year 2020-2021. It has also been requested in the Fiscal Year 2020-2021 Department Request budget to be consider at the budget hearings. The funding for this budget comes from the Tech refresh program.

**ATTACHMENTS:**

1. Enterprise Agreement Amendment
2. Enterprise Agreement
3. County of Inyo Microsoft EA Enrollment Package
4. County of Inyo Microsoft EA Discount Transparency Disclosure Form

**APPROVALS:**

Lavon Sargent	Created/Initiated - 7/22/2020
Darcy Ellis	Approved - 7/22/2020
Marshall Rudolph	Approved - 7/27/2020
Amy Shepherd	Approved - 7/28/2020
Scott Armstrong	Final Approval - 7/28/2020

# Microsoft Document Headersheet

*\* This is for informational purposes only \**

**MSE#:**

**5-0000004275258**

(MSLI  
Tracking  
Number)

**Doc Type:**

**Amendments**

*Do not modify the formatting or spacing of this Form above this text*

Subsidiary:

Country:

**United States**

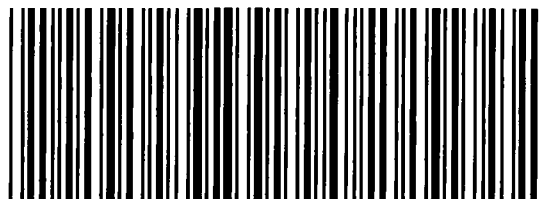
Account Manager Name / Alias:

LAR/LAD/ESA:

**Insight Direct USA, Inc.**

Program/Version

**EA 6 2016**



(Scanning Code)

**ACCOUNT: County of Riverside**

Outsourcer Name:

Business Agreement Number:

Master Agreement Number: **8084445**

Agreement Number:

Purchase Order Number:

3

**Comments:**

## Amendment to Contract Documents

Agreement Number

8084445

004-kayleed-S-04

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

### Enterprise Agreement Custom Terms CTM

1. Section 6a, "Term", is hereby amended and restated as follows:
  - a. **Term.** The term of this Agreement will remain in effect unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
2. The pricing that Microsoft will offer Enrolled Affiliate's Reseller for Enrollments effective between November 1, 2019 through October 31, 2021, and that will apply for the entire initial term of such Enrollments, is as follows:

Product	Price Level	Examples include but are not limited to the following*:
<b>Enterprise Online Services**</b> (including Full USLs, From SA USLs, Add-ons and Step Ups)	Level D minus 2%	M365 E3 and E5, Enterprise Mobility + Security E3 and E5, Office 365 Enterprise E1 or E3, Windows 10 Enterprise E3 or E5
<b>Enterprise Products</b>	Level D	Office 365 Pro Plus, Windows 10 Enterprise, Core CAL Suite, Enterprise CAL Suite
<b>Additional Products</b>	Level D	M365 F1, M365 E5 Compliance, M365 E5 Security, Office 365 Enterprise F1, Project Online, Visio Online Plan 1 or Plan 2, Dynamics 365, Azure, SQL Server, Windows Server, etc.
<b>Server and Tools Product</b> (applies to Server and Cloud Enrollments only)	Level D	SharePoint Server, SQL Server, BizTalk Server, Visual Studio, Core Infrastructure Suites, etc.

\* The examples include online services that are available in either the commercial or government cloud offerings.

\*\*Qualifying Enterprise Online Services are identified in the Product Terms with the cell value of 'EO' in the tables for "Program Availability". The scope of Enterprise Online Services is subject to change as Enterprise Online Services are added, updated/reviced or removed from the Enterprise program offering.

Exclusions apply to the additional 2% discount on Enterprise Online Services as follows:

- The price list month that applies to an order is not a factor in determining whether the additional 2% discount on Enterprise Online Services may be applied to an order. The only applicable factor is the effective date of the Enrollment.
- The discount does not apply to any extensions of the initial Term or renewal Enrollments.
- The discount does not apply to any promotional SKUs. Enrolled Affiliate is entitled to the lower of the promotional price or discounted price.

The price level that applies to Enrollments effective on or after November 1, 2021 is Level D for all Products.

The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

**This Amendment must be attached to a signature form to be valid.**

**Microsoft Internal Use Only:**

Riverside County EA Amend 8.7.docx	CTM	CTM-CPT-OPT-FWK	BD
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# Microsoft Document Headersheet

*\* This is for informational purposes only \**

**MSE#:**

**5-0000004275258**

(MSLI  
Tracking  
Number)

**Doc Type:**

**[REDACTED] Agreement**

*Do not modify the formatting or spacing of this Form above this text*

Subsidiary:

Country:

**United States**

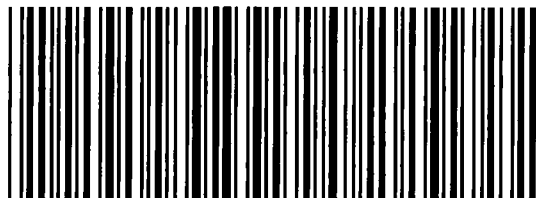
Account Manager Name / Alias:

LAR/LAD/ESA:

**Insight Direct USA, Inc.**

Program/Version

**EA 6 2016**



(Scanning Code)

**ACCOUNT: County of Riverside**

Outsourcer Name:

Business Agreement Number:

Master Agreement Number: **8084445**

Agreement Number:

Purchase Order Number:

15

**Comments:**



## Enterprise Agreement

## State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

This Microsoft Enterprise Agreement ("Agreement") is entered into between the entities identified on the signature form.

**Effective date.** The effective date of this Agreement is the earliest effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) these Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product Terms applicable to Products licensed under this Agreement, (3) the Online Services Terms, (4) any Affiliate Enrollment entered into under this Agreement, and (5) any order submitted under this Agreement.

**Please note:** Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, including the Product Terms and Use Rights. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed.

### **Terms and Conditions**

#### **1. Definitions.**

"Affiliate" means

- a. with regard to Customer,
  - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
  - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and
  - (iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft.

"Customer" means the legal entity that has entered into this Agreement with Microsoft.

"Customer Data" means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate and its Affiliates through use of Online Services.

"day" means a calendar day, except for references that specify "business day".

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates that has entered into an Enrollment under this Agreement.

"Enrollment" means the document that an Enrolled Affiliate submits under this Agreement to place orders for Products.

"Enterprise" means an Enrolled Affiliate and the Affiliates for which it is responsible and chooses on its Enrollment to include in its enterprise.

"Fixes" means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"License" means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses.

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or an Enrollment and its Affiliates, as appropriate.

"Online Services" means the Microsoft-hosted services identified as Online Services in the Product Terms.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Volume Licensing Site and updated from time to time.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including pre-release or beta versions.

"Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

"SLA" means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

"Software Assurance" is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

"use" or "run" means to copy, install, use, access, display, run or otherwise interact.

"Use Rights" means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

## **2. *How the Enterprise program works.***

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.

- c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product List.

### 3. **Licenses for Products.**

- a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- c. **Applicable Use Rights.**
- (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the applicable Enrollment term will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the Agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.
- (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.
- d. **Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not to use the new version immediately.
- (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
- (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This Agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.

- g. **Reorganizations, consolidations and privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) a reorganization, consolidation or privatization of an entity or an operating division, (2) a privatization of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this Agreement.

#### **4. Making copies of Products and re-imaging rights.**

- a. **General.** Enrolled Affiliate may make as many copies of Products, as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
  - (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
  - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
  - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

#### **5. Transferring and reassigning Licenses.**

- a. **License transfers.** License transfers are not permitted, except that Customer or an Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:
  - (i) an Affiliate, or
  - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (A) a privatization of an Affiliate or agency or of an

operating division of Enrolled Affiliate or an Affiliate. (B) a reorganization, or (C) a consolidation.

Upon such transfer, Customer or Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

## 6. **Term and termination.**

- a. **Term.** The term of this Agreement will be 36 full calendar months from the effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- b. **Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days' written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this Agreement.
- c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this Agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.
- d. **Termination for cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of that notice and Customer agrees to help resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Enrolled Affiliate, together with Customer's help, within a reasonable period of time, Microsoft may terminate this Agreement and all Enrollments under it. If an Enrolled Affiliate ceases to be Customer's Affiliate, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

- e. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminates an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:
  - (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or

(ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:

- 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
- 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

(iii) In the case of early termination under subscription Enrollments, Enrolled Affiliate will have the following options:

- 1) For eligible Products, Enrolled Affiliate may obtain perpetual Licenses as described in the section of the Enrollment titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
- 2) In the event of a breach by Microsoft, if Customer chooses not to exercise a buy-out option, Microsoft will issue Enrolled Affiliate a credit for any amount paid in advance for Subscription Licenses that the Enterprise will not be able to use to do the termination of the Enrollment.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.

**f. Effect of termination or expiration.** When an Enrollment expires or is terminated,

- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments for any order of any kind remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
- (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.

**g. Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating in the jurisdiction; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation.

**h. Program updates.** Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at the time of an Enrollment renewal.

## **7. Use, ownership, rights, and restrictions.**

- a. Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

- d. **Restrictions.** Enrolled Affiliate must not (and is not licensed to) (1) reverse engineer, decompile, or disassemble any Product or Fix; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer must not (and is not licensed to) (i) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (ii) distribute, sublicense, rent, lease, lend any Products or Fixes, in whole or in part, or use them to offer hosting services to a third party.
- e. **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

## **8. Confidentiality.**

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) the receiving party received lawfully from another source without a confidentiality obligation, (c) is independently developed, or (d) is a comment or suggestion volunteered about the other party's business, products or services.

Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

## **9. Privacy and compliance with laws.**

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Personal information collected under this agreement (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft will abide by the requirements of European Economic Area and Swiss data protection

law regarding the collection, use, transfer, retention, and other processing of personal data from the European Economic Area and Switzerland.

- c. **U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies.

## 10. **Warranties.**

### a. **Limited warranties and remedies.**

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date the Enterprise is first licensed for that version. If it does not and the Enterprise notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Enrolled Affiliate paid for the Software license, or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during the Enterprise's use. The Enterprise's remedies for breach of this warranty are in the SLA.

The remedies above are the Enterprise's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse, or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above, Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

## 11. **Defense of third party claims.**

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted (unmodified from the form provided by Microsoft and not combined with anything else) misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, at its option, either (1) modify or replace the Product or Fix with a functional equivalent; or (2) terminate Enrolled Affiliate's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third-party claim.
- b. **By Enrolled Affiliate.** To the extent permitted by applicable law, Enrolled Affiliate will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or



non-Microsoft software hosted in an Online Service by Microsoft on Enrolled Affiliate's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Enrolled Affiliate's use of any Product or Fix, alone or in combination with anything else, violates the law or damages a third party.

## 12. *Limitation of liability.*

For each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of this Agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.
- b. **Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or for loss of use, loss of business information, loss of revenue, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

## 13. *Verifying compliance.*

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to the extent permitted by applicable law, to verify compliance with the Product's license terms. Enrolled Affiliate must promptly provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process, which Microsoft may require as an alternative to a third party audit.
- b. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 30 days, (1) Enrolled Affiliate must order sufficient Licenses to cover that use or distribution, and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 125% of the price based on the then-current price list and Enrolled Affiliate price level. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.
- c. **Verification process.** Microsoft will notify Enrolled Affiliate at least 30 days in advance of its intent to verify Enrolled Affiliate's compliance with the license terms for the Products Enrolled Affiliate and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations.

## 14. *Miscellaneous.*

- a. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance subject to the terms of this Agreement.
- b. **Microsoft as independent contractor.** The parties are independent contractors. Enrolled Affiliate and Microsoft each may develop products independently without using the other's Confidential Information.
- c. **Notices.** Notices to Microsoft must be sent to the address on the signature form. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Enrolled Affiliate about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Enrolled Affiliate. Emails will be treated as delivered on the transmission date.
- d. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products.
- e. **Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product Terms and the Use Rights from time to time in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in an Enrolled Affiliate's purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- f. **Assignment.** Either party may assign this Agreement to an Affiliate, but must notify the other party in writing of the assignment. Any other proposed assignment must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- g. **Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state.
- h. **Severability.** If any provision in this agreement is held to be unenforceable, the balance of the agreement will remain in full force and effect.
- i. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- j. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights.
- k. **Survival.** All provisions survive termination or expiration of this Agreement except those requiring performance only during the term of the Agreement.
- l. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- m. **Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order from highest to lowest priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product Terms, (4) the Online Services Terms, (5) orders submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

- n. **Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- o. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- p. **Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.
- q. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this Agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Agreement for unlicensed use.

## Supplemental Contact Information Form

This form can be used in combination with MBSA, Agreement, and Enrollment/Registration. However, a separate form must be submitted for each enrollment/registration, when more than one is submitted on a signature form. For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Primary and Notices contacts in this form will not apply to enrollments or registrations.

This form applies to:  MBSA  
 Agreement  
 Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

### **Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields; if the entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

#### **1. Additional notices contact.**

This contact receives all notices that are sent from Microsoft. No online access is granted to this individual.

Name of entity\* County of Riverside  
Contact name\*: First Regina Last Funderburk  
Contact email address\* RFunderburk@rivco.org  
Street address\* 3450 14th Street, 4th Floor  
City\* Riverside State/Province\* California Postal code\* 92501-3861  
Country\* USA  
Phone\* 951-955-2265 Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

#### **2. Software Assurance manager.**

This contact will receive online permissions to manage the Software Assurance benefits under the Enrollment or Registration.

Name of entity\* County of Riverside  
Contact name\*: First Regina Last Funderburk  
Contact email address\* RFunderburk@rivco.org  
Street address\* 3450 14th Street, 4th Floor  
City\* Riverside State/Province\* California Postal code\* 92501-3861

Country\* USA

Phone\* 951-955-2265 Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 3. **Subscriptions manager.**

This contact will assign MSDN, Expression, and TechNet Plus subscription licenses to the individual subscribers under this Enrollment or Registration. Assignment of the subscription licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

Name of entity\* County of Riverside

Contact name\*: First Regina Last Funderburk

Contact email address\* RFunderburk@rivco.org

Street address\* 3450 14th Street, 4th Floor

City\* Riverside State/Province\* California Postal code\* 92501-3861

Country\* USA

Phone\* 951-955-2265 Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 4. **Online services manager.**

This contact will be provided online permissions to manage the online services ordered under the Enrollment or Registration.

Name of entity\* County of Riverside

Contact name\*: First Luis Last Flores

Contact email address\* LFFlores@rivco.org

Street address\* 3450 14th Street, 4th Floor

City\* Riverside State/Province\* California Postal code\* 92501-3861

Country\* USA

Phone\* 951-955-8114 Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 5. **Customer Support Manager (CSM).**

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of entity\* County of Riverside

Contact name\*: First Luis Last Flores

Contact email address\* LFFlores@rivco.org

Street address\* 3450 14th Street, 4th Floor

City\* Riverside State/Province\* California Postal code\* 92501-3861

Country\* USA

Phone\* 951-955-8114 Fax

### 6. **Primary contact information.**

An individual from inside the organization must serve as the primary contact. This contact receives online administrator permissions and may grant online access to others. This contact also receives all notices unless Microsoft is provided written notice of a change.

Name of entity\* County of Riverside

Contact name\*: First Jim Last Smith  
Contact email address\* jimsmith@rivco.org  
Street address\* 3450 14th Street, 4th Floor  
City\* Riverside State/Province\* CA Postal code\* 92501-3861  
Country\* US  
Phone\* 951-231-5909 Fax

**7. Notices contact and online administrator information.**

This individual receives online administrator permissions and may grant online access to others. This contact also receives all notices.

Same as primary contact

Name of entity\*

Contact name\*: First Last

Contact email address\*

Street address\*

City\* State/Province\* Postal code\*

Country\*

Phone\* Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

## Program Signature Form

MBA/MBSA number

8084445
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5-0000005631179
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Agreement number

8084445

**Note:** Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
Enterprise Enrollment	X20-10635
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Product Selection Form	0975412.002 (New)
Amendment	M97 (New)
Amendment	W29 (New)
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
<b>Name of Entity (must be legal entity name)*</b> County of Inyo <b>Signature*</b> _____ <b>Printed First and Last Name*</b> Scott Armstrong <b>Printed Title</b> Information Services Director <b>Signature Date*</b> _____
<b>Tax ID</b> _____

\* indicates required field

Microsoft Affiliate	
Microsoft Corporation	
<b>Signature</b>	<u>Mary Ann Holland</u> <small>Mary Ann Holland (Jul 7, 2020 10:52 PDT)</small>
<b>Printed First and Last Name</b>	Mary Ann Holland
<b>Printed Title</b>	Authorized Signer
<b>Signature Date</b> <small>(date Microsoft Affiliate countersigns)</small>	Jul 7, 2020
<b>Agreement Effective Date</b> <small>(may be different than Microsoft's signature date)</small>	

Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

Customer	
<b>Name of Entity (must be legal entity name)*</b>	
<b>Signature*</b>	_____
<b>Printed First and Last Name*</b>	
<b>Printed Title</b>	
<b>Signature Date*</b>	

\* indicates required field

Outsourcer	
<b>Name of Entity (must be legal entity name)*</b>	
<b>Signature*</b>	_____
<b>Printed First and Last Name*</b>	
<b>Printed Title</b>	
<b>Signature Date*</b>	

\* indicates required field

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Corporation**  
 Dept. 551, Volume Licensing  
 6880 Sierra Center Parkway  
 Reno, Nevada 89511  
 USA



# Microsoft | Volume Licensing

## Discount Transparency Disclosure Form

Date: 6/29/2020  
Program: Enterprise 6  
Enrollment Number: Renewal  
Quote Number: 0975412.002  
Partner Name: Dell Inc.  
Reseller Address: One Dell Way  
RoundRock, TX, United States, 78682-7000

### Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

### Ordered Products

Currency	Maximum Resale Price
US Dollar	63,846

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

"Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

"Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

**Partner:** Dell Inc.  
**Customer:** County of Inyo  
**Signature of Customer's authorized representative:** \_\_\_\_\_  
**Printed name:** Scott Armstrong  
**Printed title:** Information Services Director  
**Date:** \_\_\_\_\_

## Enterprise Enrollment

## State and Local

Enterprise Enrollment number  
(Microsoft to complete)

Framework ID  
(if applicable)

Previous Enrollment number  
(Reseller to complete)

**This Enrollment must be attached to a signature form to be valid.**

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

## ***Terms and Conditions***

### ***1. Definitions.***

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

## **2. Order requirements.**

- a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
  - (i) Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
  - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. Adding Products.**
  - (i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
  - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
  - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
  - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
  - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

### **4. Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. . The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### **5. End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

**c. If Enrolled Affiliate elects not to renew.**

(i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month (“Extended Term”) is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) **Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

**d. Termination for cause.** Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

**e. Early termination.** Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

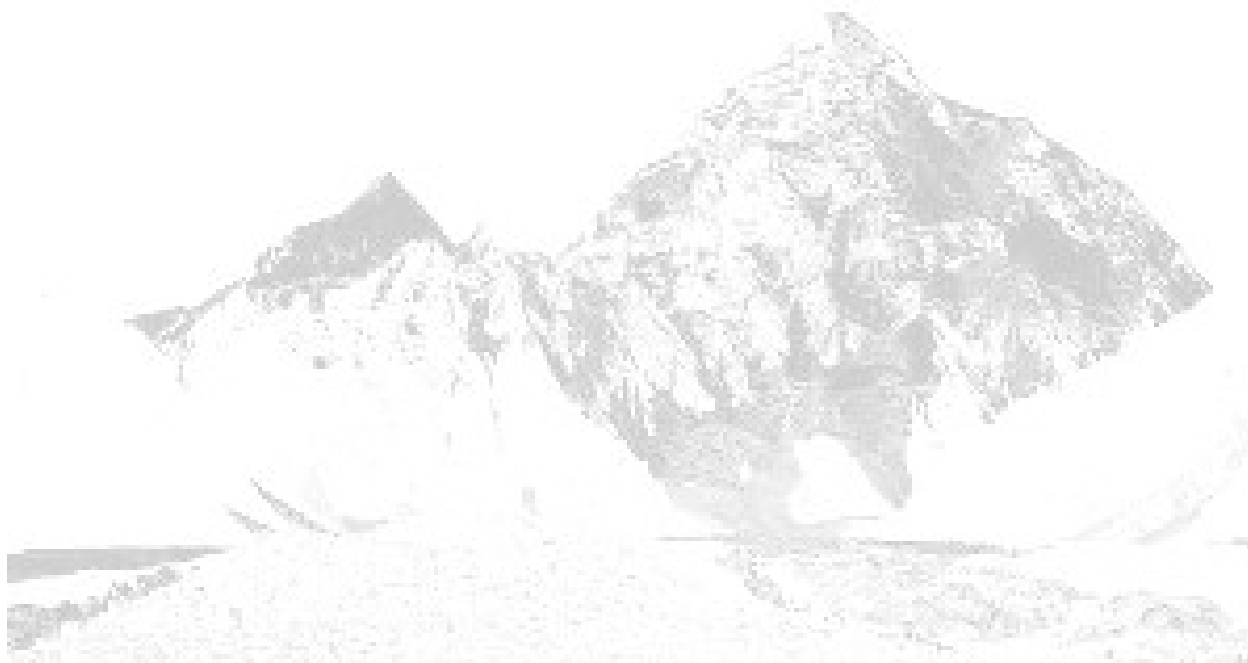
## **6. Government Community Cloud.**

**a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate’s license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

**b.** All terms and conditions applicable to non-Government Community Cloud Services also apply

to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i) Government Community Cloud Services will be offered only within the United States.
  - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.





## **Enrollment Details**

### **1. Enrolled Affiliate's Enterprise.**

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

### **2. Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

**Name of entity (must be legal entity name)\*** County of Inyo

**Contact name\* First** Scott **Last** Armstrong

**Contact email address\*** sarmstrong@inyocounty.us

**Street address\*** 168 N. Edwards Street., PO Box 477

**City\*** Independence

**State\*** CA  
**Postal code\*** 93526-0477  
(Please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\*** USA  
**Phone\*** 760-878-0390  
**Tax ID**  
*\* indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

**Contact name\*** First Mike Last Baffrey  
**Contact email address\*** mbaffrey@inyocounty.us  
**Street address\*** 168 N. Edwards Street., PO Box 477  
**City\*** Independence  
**State\*** CA  
**Postal code\*** 93526-0477  
(Please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\*** USA  
**Phone\*** 760-937-2974  
**Language preference.** Choose the language for notices. English  
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.  
*\* indicates required fields*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*:** First Last  
**Contact email address\***  
**Phone\***

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.  
*\* indicates required fields*

- d. Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\*** Dell Inc.  
**Street address (PO boxes will not be accepted)\*** One Dell Way  
**City\*** Round Rock  
**State\*** TX  
**Postal code\*** 78682  
**Country\*** United States  
**Contact name\*** Government Contract Admin  
**Phone\*** 847-465-3700  
**Contact email address\*** US\_MS\_VL\_Admin@Dell.com  
*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

<b>Signature*</b> <u>RoseAnn Bretzmann</u>
<b>Printed name*</b> RoseAnn Bretzmann
<b>Printed title*</b> Analyst
<b>Date*</b> 7/7/2020

\* indicates required fields

**Changing a Reseller.** If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### 3. **Financing elections.**

Is a purchase under this Enrollment being financed through MS Financing?  Yes,  No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

## Amendment to Contract Documents

Enrollment Number

5-0000005631179

This amendment (“Amendment”) is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

### Enterprise Enrollment (Indirect) Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate’s Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate’s Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate’s Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate’s Reseller.

SKU Number	SKU Description	Existing Quantity	Incremental quantities
AAD-34704	M365 E3 GCC Unified ShrdSvr ALNG SubsVL MVL PerUsr	0	50
3PS-00001	ExchgOnlnKioskGCC ShrdSvr ALNG SubsVL MVL PerUsr	0	1

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

**This Amendment must be attached to a signature form to be valid.**

**Microsoft Internal Use Only:**

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)( WW)(ENG)(Dec2019)(IU) .docx		M97	B
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**Proposal ID**

0975412.002

**Enrollment Number**

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:					
Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	50	50	1.0	No	User Licenses

Products	Enterprise Quantity
<b>Microsoft 365 Enterprise</b>	
Microsoft 365 E3 USL	50

Enrolled Affiliate's Product Quantities:				
Price Group	1	2	3	4
<b>Enterprise Products</b>	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise
<b>Quantity</b>	50	50	50	50

Enrolled Affiliate's Price Level:	
Product Offering / Pool	Price Level
<b>Enterprise Products and Enterprise Online Services USLs:</b> Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
<b>Additional Product Application Pool:</b> Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
<b>Additional Product Server Pool:</b> Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
<b>Additional Product Systems Pool:</b> Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

NOTES
Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

**Note 1:** Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.

**Note 2:** If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.

# Enterprise Sub 250 Program Amendment ID W29

Enrollment Number

This amendment (“Amendment”) is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

The parties agree that the Enrollment is amended as follows:

**1. On the first page of the Enrollment, the following is added after the second paragraph:**

By entering into this Enrollment, the Enrolled Affiliate agrees that (1) it also has 25 or more Qualified Devices or Qualified Users; or (2) as a condition of entering into this Enrollment with 25-249 Qualified Devices or Qualified Users, Enrolled Affiliate has elected not to receive CD ROMs as part of the Enrollment and therefore no CD ROMs will automatically be shipped. If Enrolled Affiliate is enrolling with 25-249 Qualified Devices or Qualified Users and it would like to receive CD ROM Kits and updates, Enrolled Affiliate may order these through its Reseller for a fee.

The submission of this Amendment can only be placed against a 2011 Enterprise Agreement or an Enrollment that has the Updated EA Amendment terms and conditions applied. The submittal of this Amendment may not be contingent on submittal of a new Enterprise Agreement.

**2. Section 2a of the Enrollment titled “Order Requirements”, is hereby amended and restated in its entirety with the following:**

- a. Minimum Order Requirements.** Enrolled Affiliate’s Enterprise must have a minimum of 25 Qualified Users or Qualified Devices.
- (i) Initial Order.** Initial order must include at least 25 Licenses from one of the four groups outlined in the Product Selection Form.
  - (ii) If choosing Enterprise Products.** If choosing Enterprise Products in a specific group outlined in the Product Selection Form, Enrolled Affiliate’s initial order must include an Enterprise-wide selection of one or more Enterprise Products or a mix of Enterprise Products and corresponding Enterprise Online Services for that group.
  - (iii) Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
  - (iv) Country of Usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
  - (v) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 25 Subscription Licenses for Enterprise Online Services.

**3. Software Assurance renewal.**

<b>Renewing Software Assurance:</b> If Enrolled Affiliate will be renewing Products Software Assurance coverage from a separate agreement, check this box.
--



By checking the above box, a new section is added to the Enrollment entitled "Software Assurance Addition."

**Software Assurance Addition.** Enrolled Affiliate is permitted to and will include in its initial order under this Enrollment Software Assurance quantities from eligible Program's identified in the table below, even though Enrolled Affiliate is not otherwise eligible to order such Software Assurance without simultaneously ordering a License.

Enrolled Affiliate agrees that any perpetual Licenses received through the New Software Assurance shall supersede and replace the underlying Licenses, and the underlying Licenses are not to be transferred separately from any Licenses received through the New Software Assurance. Any remaining payment obligations with respect to the underlying Licenses shall continue in effect.

Program	License ID Number	Expiration Date

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

**This Amendment must be attached to a signature form to be valid.**








# County of Inyo Pre sig

Final Audit Report

2020-07-07

Created:	2020-07-07
By:	Roseann Bretzmann (Roseann_Bretzmann@Dell.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGAwOylFE0z8oPORPpq0nyXr4HtoAcF4j

## "County of Inyo Pre sig" History

-  Document created by Roseann Bretzmann (Roseann\_Bretzmann@Dell.com)  
2020-07-07 - 5:50:32 PM GMT- IP address: 71.239.102.35
-  Document emailed to Mary Ann Holland (v-maryv@microsoft.com) for signature  
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-  Signed document emailed to Mary Ann Holland (v-maryv@microsoft.com) and Roseann Bretzmann (Roseann\_Bretzmann@Dell.com)  
2020-07-07 - 5:52:50 PM GMT

# Microsoft | Volume Licensing

## Discount Transparency Disclosure Form

Date: 6/29/2020  
Program: Enterprise 6  
Enrollment Number: Renewal  
Quote Number: 0975412.002  
Partner Name: Dell Inc.  
Reseller Address: One Dell Way  
RoundRock, TX, United States, 78682-7000

### Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

### Ordered Products

Currency	Maximum Resale Price
US Dollar	63,846

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

"Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

"Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

**Partner:** \_\_\_\_\_

**Customer:** \_\_\_\_\_

**Signature of Customer's authorized representative:** \_\_\_\_\_

**Printed name:** \_\_\_\_\_

**Printed title:** \_\_\_\_\_

**Date:** \_\_\_\_\_



# County of Inyo



## County Administrator - Information Services

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Scott Armstrong

**SUBJECT:** Granite Communications Service Agreement

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**RECOMMENDED ACTION:**

Request Board waive competitive bidding and then ratify and approve the Service Agreement between the County of Inyo and Granite Communications of Quincy, MA, under the California Multiple Award Schedule No. 3-19-70-3749A, for the provision of SIP Trunk telecommunications and long-distance services in an amount not to exceed \$91,440 plus long distance charges, paid monthly at \$2,940 plus long distance charges, for the period of July 1, 2020 through June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the Information Services Director or the Deputy Information Services Director to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

This Service Agreement will provide Session Internet Protocol (SIP) Trunk services to support our new Voice over IP (VoIP) telephone system. SIP Trunk services provide a dedicated communications pathway for our telephone system to communicate with other telephone systems outside of our County's network. This service agreement also includes long-distance services that may fluctuate monthly.

Our current hosted telephone services cost the County approximately \$305,000 per year. Though we will need to retain a relatively small number of regular telephone lines for fax machines and emergencies, most of the existing costs for the current hosted telephone services will be replaced by our new VoIP system.

This proposed purchase would utilize special pricing available to the County as a local government agency through the State of California's Multiple Award Schedule (CMAS). Under such circumstances, it is not in the public's interest to engage in competitive bidding, and waiving competitive bidding is authorized by the County's purchasing policies.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board may choose to not approve this request, resulting in using non-prioritized traffic on regular Internet connections for our VoIP phone system, resulting in unstable and frequently dropped telephone connections.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

Funding for the SIP Trunk Services is requested in the FY 2020-2021 Information Services budget 11801, Utilities object code 5351.

**ATTACHMENTS:**

1. California Multiple Award Schedule
2. Inyo County Service Agreement and Terms
3. Inyo County SIP Trunk Pricing Breakdown

**APPROVALS:**

Lavon Sargent	Created/Initiated - 7/27/2020
Darcy Ellis	Approved - 7/27/2020
Marshall Rudolph	Approved - 7/27/2020
Amy Shepherd	Approved - 7/28/2020
Scott Armstrong	Final Approval - 7/28/2020

State of California  
**MULTIPLE AWARD SCHEDULE**

**Granite Telecommunications, LLC**

CMAS NUMBER:	<b>3-19-70-3749A</b>
CMAS TERM DATES:	10/10/2019 through 2/09/2024
CMAS CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	<u>June 7, 2019</u> (www.dgs.ca.gov/-/media/Divisions/PD/Acquisitions/CMAS/IT-CMAS-Terms-and-Conditions.ashx?la=en&hash=B41342080DE511121ECC253A04D62AC90CED6123)
MAXIMUM ORDER LIMIT:	State Agencies: <b>See Purchasing Authority Dollar Threshold provision</b> Local Government Agencies: <b>Unlimited</b>
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE #:	GS-35F-208BA
BASE SCHEDULE HOLDER:	Granite Telecommunications, LLC

This CMAS provides for the purchase, warranty, and installation of telecommunication equipment and services. (See page 3 for the restrictions applicable to this CMAS.)

NOTICE: Products and/or services on this CMAS may be available on a Mandatory Statewide Contracts. If this is the case, the use of this CMAS is restricted unless the State agency has an approved exemption as explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the: [Statewide Contract Index Listing](http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf) (www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf). This requirement is not applicable to local government entities.

**TELECOMMUNICATIONS EQUIPMENT**

Prior to using this CMAS, all State agencies are advised to review the California Department of Technology, Statewide Telecommunications and Network Division, "State Telecommunications Management Manual" (STMM), Category 0400 Sections for current delegation parameters applying to the acquisition of telecommunications equipment and services. This provision does not apply to local governments.

*Original Signature on File* \_\_\_\_\_ Effective Date: **10/10/2019**

**BRYAN DUGGER, Program Analyst, California Multiple Award Schedules Unit**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

The most current Ordering Instructions and Special Provisions, CMAS Terms and Conditions, and products and/or services are included herein. All purchase orders issued by State agencies under this CMAS shall incorporate these Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated June 7, 2019.

Agency non-compliance with the requirements of this CMAS may result in the loss of delegated authority to use the CMAS program.

CMAS contractor non-compliance with the requirements of this CMAS may result in termination of the CMAS.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**CMAS PRODUCT & SERVICE CODES**

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS and the base contract identified below for the products and/or services available on this CMAS.

ISDN-Router  
Service-Internet Services  
Service-Telecom Services

**AVAILABLE PRODUCTS AND/OR SERVICES**

The ordering agency must verify all products and/or services are currently available on the base General Services Administration (GSA) schedule. Access the [GSA eLibrary](http://www.gsa.gov/eLibrary) at [www.gsa.gov/eLibrary](http://www.gsa.gov/eLibrary).

**CMAS BASE CONTRACT**

**This CMAS is based on some or all of the products and/or services and prices from GSA Schedule Number GS-35F-208BA (GRANITE TELECOMMUNICATIONS, LLC) with a GSA term of 2/10/2014 through 2/09/2024.**

**EXCLUDED PRODUCTS AND/OR SERVICES**

Order-Level Materials are not available under this CMAS.

**ISSUE PURCHASE ORDER TO**

Agency purchase orders must be either mailed or emailed to the following:

**Granite Telecommunications, LLC  
444 West Railroad Avenue, Suite 200  
West Palm Beach, FL 33401  
Attn: Greg Giambalvo**

**E-mail: [ggiambalvo@granitenet.com](mailto:ggiambalvo@granitenet.com)**

Agencies with questions regarding products and/or services may contact the CMAS contractor as follows:

**Contact: Greg Giambalvo  
Phone: (561) 868-8114  
E-mail: [ggiambalvo@granitenet.com](mailto:ggiambalvo@granitenet.com)**

**CALIFORNIA SELLER'S PERMIT**

Granite Telecommunications, LLC's California Seller's Permit Number is 101272386. Prior to placing an order with this company, agencies must verify that this permit is still valid at the [California Department of Tax and Fee Administration website](http://www.cdtdfa.ca.gov) ([cdtdfa.ca.gov](http://cdtdfa.ca.gov)).

**CMAS PRICES**

The maximum prices allowed for the products and/or services available in this CMAS are those set forth in the base contract identified on page 2 of this CMAS.

The ordering agency is encouraged to seek prices lower than those on this CMAS. When responding to an agency's Request for Offer (RFO), the CMAS contractor can offer lower prices to be competitive.



**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**PRICE DISCOUNTS**

This CMAS contains dollar volume discounts. See the base GSA schedule for the specific percent of discount.

**CALIFORNIA CIVIL RIGHTS LAW CERTIFICATION**

Pursuant to Public Contract Code section 2010, effective January 1, 2017, applicants must certify their compliance with the California Civil Rights laws and Employer Discriminatory Policies (section 51 of the Civil Code, section 12960 of the Government Code). It is the agency's responsibility to verify that the contractor has a California Civil Rights Law Certification on file.

**WARRANTY**

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

**DELIVERY**

30 days after receipt of order, or as negotiated between agency and CMAS contractor and included in the purchase order, or as otherwise stipulated in the contract.

**SHIPPING INSTRUCTIONS**

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

**PURCHASING AUTHORITY DOLLAR THRESHOLD**

Unless otherwise determined by individual ordering agency purchasing authority, order limits for the purchase of goods and/or services is:

Information Technology Goods and Services: \$500,000

No CMAS order may be executed by a State agency that exceeds that agency's purchasing authority threshold. State agencies with approved purchasing authority, along with their dollar thresholds can be obtained at the List of State Departments with Approved Purchasing Authority website ([www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-State-Departments-with-Approved-Purchasing-Authority](http://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-State-Departments-with-Approved-Purchasing-Authority)).

**HOW TO USE CMAS**

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT), the SCM, Volume 3, Chapter 6 (for IT), and the SCM, Volume FISCAL, Chapter 5 (FISCAL):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors on the CMAS website ([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) and select "Find a CMAS Contractor."

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Standard 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2, 3, and FISCAL, Chapter 3).
- This is not a bid transaction, so the small business preference, DVBE incentives, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected CMAS contractor.
- For CMAS transactions under \$10,000, only one offer is required if the State agency can establish and document that the price is fair and reasonable. The fair and reasonable method can only be used for non-customizable purchases.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this CMAS.

**SPLITTING ORDERS**

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders, per Public Contract Code (PCC) § 10329.

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited, per State Administrative Manual (SAM) § 4819.34.

**MINIMUM ORDER LIMITATION**

There is no minimum dollar value limitation on orders placed under this CMAS.

**ORDERING PROCEDURES**

**1. Purchase Orders**

All Ordering Agency purchase order documents executed under this CMAS must contain the applicable CMAS number as show on page 1.

1. State Departments:

Standard 65 Purchase Documents – State departments not transacting in FI\$Cal must use the Purchasing Authority Purchase Order (Standard 65) for purchase execution. An electronic version of the Standard 65 is available at the DGS-PD website ([www.dgsapps.dgs.ca.gov/osp/Statewid eFormsWeb/Forms.aspx](http://www.dgsapps.dgs.ca.gov/osp/Statewid eFormsWeb/Forms.aspx)), select Standard STD Forms.

FISCAL Purchase Documents – State departments transacting in FISCAL will follow the FISCAL procurement and contracting procedures.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**2. Local Governmental Departments:**

Local governmental agencies may use their own purchase document for purchase execution.

The agency is required to complete and distribute the purchase order. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject purchase orders that are not accurate. Discrepancies are to be negotiated and incorporated into the purchase order prior to the products and services being delivered.

**2. Service and Delivery after CMAS Expiration**

The purchase order must be issued before the CMAS expires. However, delivery of the products or completion of the services may be after the CMAS expires (unless otherwise specifically stated in the purchase order).

**3. Multiple CMAS Agreements on a Single Purchase Order**

Agencies wishing to include multiple CMAS(s) on a single FISCAL purchase order must adhere to the following guidelines:

- All CMAS must be for the same CMAS contractor.
- The purchase order must go to one contractor location.
- Write the word "CMAS" in the space usually reserved for the contract number. On Standard 65's, this is at the top of the form. The word "CMAS" signifies that the purchase order contains items from multiple CMAS agreements. The purchasing agency may only use one bill code.
- For each individual CMAS (as differentiated by alpha suffix), the agency must identify and group together the CMAS number with the line items and subtotal per CMAS number (do not include tax in the subtotal), and sequentially identify each individual CMAS as Sub #1, Sub #2, Sub #3, etc. This facilitates accurate billing of administrative fees by the Procurement Division.
- The total of all items on the purchase order must not exceed the purchase order limit identified in the CMAS.
- Do not combine items from both non-IT and Information Technology CMAS(s). A non-IT CMAS begin with the number "4" and an Information Technology CMAS begins with the number "3." The purchase order limits are different for these two types of CMAS agreements.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**4. Amendments to Agency's Purchase Orders**

Agency purchase orders cannot be amended if the CMAS has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 and SCM, Volume FISCAL, Chapter 5.A4.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 and SCM, Volume FISCAL, Chapter 5.A4.1 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended, per Public Contract Code (PCC) § 10335 (d)(1). This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 6, for more information on amending purchase orders.

**CMAS CONTRACTOR OWNERSHIP INFORMATION**

Granite Telecommunications, LLC is a large business enterprise.

**SMALL BUSINESS MUST BE CONSIDERED**

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS [Government Code (GC) § 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

**CMAS Small Business and Disabled Veteran Partners lists**

([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) can be found on the CMAS website by selecting "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See the current fees in the DGS Price Book at: [www.dgs.ca.gov/OFS/Price-Book](http://www.dgs.ca.gov/OFS/Price-Book).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**SMALL BUSINESS/DVBE - TRACKING**

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the CMAS contractor subcontracts a commercially useful function to a certified small business or DVBE. The CMAS contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

**SMALL BUSINESS/DVBE - SUBCONTRACTING**

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the CMAS contractor to each small business or DVBE.
2. The CMAS contractor will provide an ordering agency with the following information at the time the order is quoted:
  - a. The CMAS contractor will state that, as the prime contractor, it shall be responsible for the overall execution of the fulfillment of the order.
  - b. The CMAS contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
    - i. List the name of each company that is certified by the Office of Small Business and DVBE Services that it intends to subcontract a commercially useful function to; and

- ii. Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
- iii. Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
- iv. Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

**NEW EQUIPMENT REQUIRED**

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all State agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

**SPECIAL MANUFACTURED GOODS**

Any CMAS for goods to be manufactured by the CMAS contractor specifically for the State and not suitable for sale to others may require progress payments.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**PRODUCT INSTALLATION**

The CMAS contractor is fully responsible for all installation services performed under the CMAS. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications.

The prime contractor, as well as any subcontractors, must hold any certifications and/or licenses required for the project.

**TRADE-IN EQUIPMENT**

Trade-ins at open market price may be considered. The product description and trade-in allowance must be identified on the purchase order.

Agencies are required to adhere to State Administrative Manual (SAM) § 3520 through 3520.6, Disposal of Personal Property and Surplus Personal Property, as applicable, when trade-ins are considered. A Property Survey Report, Standard 152, must be submitted for approval prior to disposition of any State-owned personal property, including general office furniture regardless of the acquisition value, or if the property was recorded or capitalized for accounting purposes.

**INTEGRATED SERVICES**

Agencies are prohibited from using CMAS and/or Masters for large-scale information technology system integration projects except when specifically approved by the California Department of Technology.

**ELECTRONIC WASTE RECYCLING**

State agencies are required to recycle state owned surplus electronic equipment that has no useful life remaining (E-Waste), to the maximum extent possible. State agencies shall dispose of E-Waste using the services of the California Prison Industry Authority (CALPIA), unless the agency meets the pickup quantity and location exemption criteria detailed in State Administrative Manual (SAM) § 3520.10. Electronic equipment that is usable and still retains value is not considered E-Waste and must be reutilized through the DGS, Office of Fleet and Asset Management (OFAM) Surplus Personal Property Warehouse.

State agencies shall determine which equipment meets the definition of E-Waste or reusable Electronic Equipment, per the definitions provided in the State Administrative Manual Management Memo MM 17-06. OFAM will validate that equipment meets the appropriate definition when reviewing the submitted Property Survey Report (STANDARD 152).

Please see State Administrative Manual (SAM) § 3520.10 for more information on this policy.

Information for submitting a STANDARD 152 can be found on the [DGS OFAM surplus property website](http://www.dgs.ca.gov/RESD/Resources/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-Surplus-Property-Homepage) ([www.dgs.ca.gov/RESD/Resources/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-Surplus-Property-Homepage](http://www.dgs.ca.gov/RESD/Resources/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-Surplus-Property-Homepage)).

Information on the [CALPIA E-Waste Program](http://www.calpia.ca.gov/products-services/e-waste-recycling-computer-refurbishing) can be found at: [www.calpia.ca.gov/products-services/e-waste-recycling-computer-refurbishing](http://www.calpia.ca.gov/products-services/e-waste-recycling-computer-refurbishing)

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

The E-Waste Exemption Request Form EWR-F029 can be found at:  
[www.calpia.ca.gov/calpia/assets/File/ewaste/E-Waste%20Exemption\\_EWR-F029.pdf](http://www.calpia.ca.gov/calpia/assets/File/ewaste/E-Waste%20Exemption_EWR-F029.pdf)

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the CMAS contractor can include it on their invoice.

**PUBLIC WORKS (INSTALLATION SERVICES ONLY)**

A public works contract is defined as an agreement for “the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind” in accordance with the Public Contract Code (PCC) § 1101. State agencies planning these types of projects need to review the SCM, Volume 1, Chapters 10 and 11 for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESA) can be contacted at (916) 376-1748, if you have questions about these types of transactions.

Agency CMAS purchase orders may allow for public works installation only when it is incidental to the total purchase order amount.

Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc., are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order.

The bond amount for public works is not less than one hundred percent (100%) of the purchase order price.

**NOTE:** In accordance with Labor Code (LC) § 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency’s office, and will be made available upon request. The prevailing wage rates are available from the DIR at [www.dir.ca.gov](http://www.dir.ca.gov) (select Statistics & Research) or (415) 703-4774.

**Bonds:** For guidelines, see CMAS, General Terms and Conditions, Public Works Requirements.

**State Contractor’s License:** Public works services can be obtained through CMAS only if incidental to the overall purchase order. If incidental public works services are included in the purchase order, prior to issuing the order agencies should contact the State Contractor’s License Board ([www.cslb.ca.gov](http://www.cslb.ca.gov)) at 1-800-321-2752 or at [www.cslb.ca.gov](http://www.cslb.ca.gov) to verify that the Contractor’s License shown below is still active and in good standing.

Granite Telecommunications, LLC's California Contractor's License number is 1024348. This is a Class C10 license that is valid through 3/31/2019.

**Cable and Wire:** Cable and wire products that are purchased under this CMAS must be for information technology projects only (computers, telecommunications, and security systems) and cannot be used for general purpose installations.

Purchase orders for cable and wire installation services only are prohibited.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

Agency questions regarding the purchase and/or installation of cable and wire for computers and/or telecommunications may be directed to the California Department of Technology, Statewide Telecommunications and Network Division.

Cable and wire installations under this CMAS must be installed and tested to EIA/TIA Standards.

**CONSULTING OR PERSONAL SERVICES**

To ensure sufficient expertise for all consulting or personal services, prior to issuing an order, the agency is required to review the resumes of all personnel the CMAS contractor intends to use to fulfill the order. Each agency is responsible for verifying that contractor personnel meet any education or experience requirements listed in the base contract.

Each order should contain, as a minimum, a description of the task, a statement of the contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for each task.

The aggregate of the fixed costs for all tasks constitutes the fixed price ceiling for all tasks described.

**1. Progress Payments**

For an IT service CMAS, see the CMAS IT Terms and Conditions, Provision #75, CMAS Progress Payments & Risk Assessment.

**2. Outsourcing Services**

Careful analysis must be given by State agencies to using contracted personnel rather than using civil service positions within State government.

Government Code (GC) § 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Issuing a CMAS purchase order for services to an independent contractor is permissible when any of the following conditions set forth in Government Code (GC) §19130(b) can be met:

- Exempt under Constitution
- New State function and legislative authority
- Service not available; highly specialized or
- Technical
- Incidental to the purchase or lease
- Conflict of interest; need unbiased findings
- Emergency appointment
- Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable
- Contractor will provide deliverables that are not feasible for the State to provide
- Training when civil service is not available
- Urgent, temporary, or occasional services when civil service delay would frustrate the purpose (see Option 2 below)



**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**When justified as outlined above, personal services must fall under one of the two following options:**

**Option 1.** CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design, and miscellaneous services are not limited to the number of hours or months per year that a consultant can work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (Government Code (GC) § 19130.b (3)).

**Option 2.** CMAS personal services orders for programmers, systems analysts, and technical specialists which are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (Government Code (GC) § 19130.b (10)/California State Constitution, Article VII, Section 5).

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

For both options above, the contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code (GC) § 19130.b (9)).

**For each order, the agency must prepare and retain in their file a written justification that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code (GC) § 19130(b).**

**3. State Personnel Board Requirements**

State Personnel Board (SPB) approval is required for a purchase order based on cost savings to the State as justification for not using civil service personnel.

**4. Statement of Work**

A Statement of Work (SOW) must be prepared as applicable for each purchase order. Information regarding the preparation of a SOW is available at the [CMAS website](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) ([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)), select "Statement of Work Information", Agencies are strongly encouraged to use this information when developing SOW requirements that will accompany the Request for Offer and the resulting purchase order.

**5. Follow-on Contracts Are Prohibited**

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code (PCC) § 10365.5).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

**NETWORK DESIGN SERVICES**

The only network design services available through CMAS are those that result in a hardware and/or software solution.

**1. Telephone or Data Line Design Services**

Any type of network design service for telephone or data line design service is not available through CMAS because they are mandatory under the current CALNET contract. This contract is managed by the California Department of Technology, Statewide Telecommunications and Network Division. See information on the current CALNET contract in the SCM, Volume 3, Chapter 6, Section H and SCM, Volume FISCAL, Chapter 5, Section H. This provision applies to State agencies only.

**2. Telecommunications Transport Systems and Related Infrastructure Components**

All network design services for telecommunications transport systems and related infrastructure components shall be performed by a Building Industry Consulting Service International (BICSI) certified Registered Communications Distribution Designer (RCDD). Evidence of RCDD certification may be required by the ordering agency.

**PRODUCTIVE USE REQUIREMENTS**

The customer in-use requirement applies to all procurements of information technology equipment and software, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FISCAL, Chapter 2, Section 2.E3.2.

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the CMAS contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

**Category 1 - Critical Software:** Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

<b>Cost</b>	<b>Installation</b>	<b>Final Bid Submission</b>
More than \$100,000	8 months	6 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

**Category 2 - All Information Technology Equipment and Non-Critical Software:**

Information technology equipment is defined in State Administrative Manual (SAM) § 4819.2.

<b>Cost</b>	<b>Installation</b>	<b>Final Bid Submission</b>
More than \$100,000	6 months	4 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

**OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS**

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the CMAS, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

**NOT SPECIFICALLY PRICED (NSP) ITEMS**

CMAS contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and CMAS contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the base contract may not be identified as an NSP item.
4. NSP Installation Services: The CMAS contractor is fully responsible for all installation services performed under the CMAS. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications. The prime contractor, as well as any subcontractors, must hold any certifications and/or licenses required for the project. The total dollar value of all installation services included in the purchase order cannot exceed the dollar value of the products included in the purchase order, nor can they exceed the NSP Maximum Order Limitation.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

5. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
6. An NSP item included in an order issued against a CMAS is subject to all of the terms and conditions set forth in the contract.
7. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FISCAL, Chapter 2, Section 2.E3.2.
4. Any other item or class of items specifically excluded from the scope of this CMAS.
5. Public Works components NOT incidental to the total purchase order amount.
6. Products or services the CMAS contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same CMAS contractor.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this CMAS:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the base contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the base contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.

The CMAS contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The CMAS contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**STATE AND LOCAL GOVERNMENTS CAN USE CMAS**

State and local government agency use of CMAS is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this CMAS available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

**UPDATES AND/OR CHANGES**

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the CMAS is based on specific products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

**SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS**

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the US Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

**ORDER OF PRECEDENCE**

The CMAS Terms and Conditions takes precedence if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**APPLICABLE CODES, POLICIES AND GUIDELINES**

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS agreements. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

**PAYMENTS AND INVOICES**

**1. Payment Terms**

Payment terms for this CMAS are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code (GC) § 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (1) the date of acceptance of goods or performance of services; or (2) receipt of an undisputed invoice, whichever is later.

**2. Payee Data Record (Standard 204)**

State Agencies not transacting in FISCAL, must obtain a copy of the Payee Data Record (Standard 204) in order to process payments. State Ordering Agencies forward a copy of the Standard 204 to their accounting office(s). Without the Standard 204, payment may be unnecessarily delayed. State Agencies should contact the CMAS contractor for copies of the Payee Data Record.

**3. DGS Administrative and Incentive Fees**

**Orders from State Agencies:**

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the [DGS Price Book](#) ([www.dgs.ca.gov/OFS/Price-Book](http://www.dgs.ca.gov/OFS/Price-Book)).

**Orders from Local Government Agencies:**

CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to **1.25%** of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS. The incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

#### **4. Contractor Invoices**

Unless otherwise stipulated, the CMAS contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- CMAS number
- Agency purchase order number
- Agency Bill Code (State Only)
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS, purchase order and invoice must match or the State Controller's Office will not approve payment.

#### **5. Advance Payments**

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (Government Code (GC) § 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription and may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Software warranty upgrades and extensions may also be paid for in advance, one time.

#### **6. Credit Card**

Granite Telecommunications, LLC accepts the State of California credit card (CAL-Card).

A purchase order is required even when the ordering department chooses to pay the CMAS contractor via the CAL-Card.

#### **7. Leasing**

The State reserves the right to select the form of payment for all procurements, be it either an outright purchase with payment rendered directly by the State, or a financing/lease-purchase or operating lease via the State Financial Marketplace (GS SMart and/or Lease SMart). If payment is via the financial marketplace, the Supplier will invoice the State and the State will approve the invoice and the selected Lender/Lessor for all product listed on the State's procurement document will pay the supplier on behalf of the State.

Buyers may contact the GS SMart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or via e-mail at [patrick.mullen@dgs.ca.gov](mailto:patrick.mullen@dgs.ca.gov) for further information.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**CONTRACTOR QUARTERLY REPORT  
PROCESS**

CMAS contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services  
Procurement Division – CMAS Unit  
Attention: Quarterly Report Processing  
PO Box 989052, MS #2-202  
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees must be mailed and shall not be e-mailed. All other reports may be e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit E-Mail: [cmas@dgs.ca.gov](mailto:cmas@dgs.ca.gov)

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to the [CMAS website](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) ([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) and then select “File a CMAS Quarterly Report”.

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as “reports” below):

- A report is required for each CMAS, each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS.
- **Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.**
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- CMAS contractors must report the sales activity for all resellers listed on their CMAS.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the CMAS contractor for corrections.
- Taxes and freight must not be included in the report.
- CMAS contractors must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below).
- New CMAS agreements, renewals, extensions, and amendments will be approved only if the CMAS contractor has submitted all required quarterly reports and incentive fees.



**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

**CONTRACTOR QUARTERLY INCENTIVE FEES**

CMAS contractors who are not California certified small businesses must remit to DGS an incentive fee equal to **1.25%** of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS agreement(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional **1.25%** charge on a separate line item to cover the incentive fee. The CMAS contractor must include the **1.25%** incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable base contract prices.

A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

**OBTAINING COPY OF ORIGINAL CMAS AND AMENDMENTS**

A copy of a CMAS and amendments, if any, can be obtained at [Cal eProcure](http://Cal eProcure) ([caleprocure.ca.gov](http://caleprocure.ca.gov)). A complete CMAS consists of the following:

- CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit)
- CMAS Terms and Conditions.
- Federal GSA (or Non-GSA) terms and conditions
- Product/service listing and prices
- Amendments, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the CMAS and are at or below base contract rates. To streamline substantiation that the needed items are in the base contract, the agencies should ask the CMAS contractor to identify the specific pages from the base contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED**

When a subcontractor ultimately provides all of the products or performs all of the services that a CMAS contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

**AGENCY RESPONSIBILITY**

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code (GC) § 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

**CONFLICT OF INTEREST**

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the CMAS Terms and Conditions, Conflict of Interest, for more information.

**FEDERAL DEBARMENT**

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the CMAS contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**CONTRACTOR TRAVEL**

The provision for travel expense reimbursement is included in this CMAS.

It is important the agency and CMAS contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the CMAS) must be included in the agency purchase order to be payable.

State agencies may only reimburse travel and per diem expenses according to State travel time and per diem rules for State employees. All travel expenses must be incorporated into the purchase order. For the current travel and per diem reimbursement rates, go to the California Department of Human Resources' website ([www.calhr.ca.gov](http://www.calhr.ca.gov)).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

Notwithstanding the CMAS provisions, the State will not be responsible for the cost of travel to bring contractor personnel from out-of-state to the job site (unless specifically arranged by agency in advance). If requested by the agency, the State will be responsible for reimbursement of travel expenses from one California agency site to another.

State agencies should refer to State Administrative Manual (SAM) § 0774 "Travel and Related Reimbursement of Persons Not State Employees", when transportation and per diem costs are to be reimbursed by the State. Reimbursement must be supported by receipts.

Local government agencies will pay travel and per diem expenses according to their statutory requirements.

**LIQUIDATED DAMAGES FOR LATE DELIVERY**

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

**ACCEPTANCE TESTING CRITERIA**

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

**AMERICANS WITH DISABILITY ACT (ADA)**

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

**DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER**

Department of General Services  
Procurement Division, CMAS Unit  
707 Third Street, 2<sup>nd</sup> Floor, MS 2-202  
West Sacramento, CA 95605-2811

Phone # (916) 375-4365

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
GRANITE TELECOMMUNICATIONS, LLC  
CMAS NO. 3-19-70-3749A**

**ATTACHMENT A**

**ADA NOTICE**

**Procurement Division (State Department of General Services)  
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE  
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans with Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

**IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.**

The Procurement Division TTY telephone numbers are:

Sacramento Office: 916-376-5127 (CALNET 480-5127)

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922, or 7-1-1

Speech to Speech Service: 1-800-854-7784

## CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Company Name: \_\_\_\_\_

Reporting Calendar Year: \_\_\_\_\_

Revision

CMAS Number: \_\_\_\_\_

Reporting Quarter:  Q1 (January to March)

For Questions Regarding this Report Contact:

Q2 (April to June)

Name: \_\_\_\_\_

Q3 (July to September)

Phone Number: \_\_\_\_\_

Q4 (October to December)

E-mail: \_\_\_\_\_

Check Here if No New Orders for This Quarter

STATE GOVERNMENT AGENCY PURCHASES						
State Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ \_\_\_\_\_

LOCAL GOVERNMENT AGENCY PURCHASES						
Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ \_\_\_\_\_

1.25% Remitted to DGS (does not apply to CA certified Small Businesses): \$ \_\_\_\_\_

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ \_\_\_\_\_

## ATTACHMENT B

### CMAS Quarterly Business Activity Report

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Instructions for **completing** the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Total Dollars Per Purchase Order** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
6. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
7. **Agency Address** - Identify the ordering agency's address on the purchase order.
8. **Phone Number** - Identify the phone number for the ordering agency's contact person.
9. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
10. **1.25% Remitted to DGS** - Identify **1.25%** of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
11. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS, each quarter, even if there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.



# Path to Partnership

WO: 173871

Inyo County

Quote Expires:  
08/18/2020

## Granite

Granite is the nation's largest CLEC. Since our founding in 2002, Granite has experienced industry-leading growth while specializing in dedicated business-to-business customer support and the consolidation of communications services. Our customers trust us with 1.4 million voice and data lines servicing their critical locations in retail, finance, real estate, hospitality, and more. We count over 85 of the Fortune 100 among our customers, including eight of the Top Ten US Retailers in the Forbes Global 2000.

## Access Services

From small business to enterprise networks, Granite offers access solutions tailored to your business needs. Our nationwide network offers bandwidth from 1.5Mb to 10GB for Dedicated Internet Access, MPLS and Granite Switched Ethernet. With over 35 vendor partnerships Granite is able to meet virtual and physical diversity requirements, covering the entire US and Canada, while keeping all services on one bill with one contact.

## Consolidated Billing

Never sort through multiple phone bills again. Simplify payment with Granite's consolidated billing. All of your business' locations can be on a single invoice.

## Service Providers

Granite is bonded to service providers across North America, including Verizon, AT&T, CenturyLink, Frontier, FairPoint, Windstream, Cincinnati Bell, Telus, and Bell Canada. We are e-bonded with all the major carriers, allowing us to place orders and manage any moves, adds, and changes for your business.

## DIA (T1, Ethernet, EoC)

All services are subject to the Terms and Conditions of Service set forth on Granite's website at [www.granitenet.com/legal](http://www.granitenet.com/legal).

This Quote contains confidential and proprietary information, and may not be disclosed to non-County personnel except as required by applicable law.



# Path to Partnership

WO: 173871

Inyo County

Quote Expires:  
08/18/2020

## Pricing Breakdown by Location

### 3 Years -DIA

<u>Address</u>	<u>Product</u>	<u>QTY</u>	<u>Term</u>	<u>Activation Fee</u>	<u>/29 MRC</u>	<u>Access MRC</u>	<u>Total MRC</u>
168 N. Edwards Independence, CA 93526	DIA FE - 10Mbps	1	3 Years	\$0.00	\$25.00	\$500.00	\$525.00
550 S Clay St Independence, CA 93526	DIA FE - 10Mbps	1	3 Years	\$0.00	\$25.00	\$500.00	\$525.00
<b>Access Total</b>		<b>2</b>					

THIS QUOTE IS AN ESTIMATE. Pricing is subject to change and is intended to be used for analysis purposes only. All services are subject to the Terms and Conditions of Service set forth on Granite's website. This Quote contains confidential and proprietary information.





# Path to Partnership

WO: 173871

Inyo County

Quote Expires:  
08/18/2020

## Equipment Pricing

### Pricing Breakdown by Location

#### 3 Years Equipment Pricing

<u>Address</u>	<u>Product Services</u>	<u>Qty</u>	<u>Term</u>	<u>MRC</u>	<u>Total MRC</u>
168 N. Edwards Independence, CA 93526		4221	1 3 Years	\$21.50	\$21.50
<b>Location Total</b>					<b>\$21.50</b>
550 S Clay St Independence, CA 93526		4221	1 3 Years	\$21.50	\$21.50
<b>Location Total</b>					<b>\$21.50</b>
<b>3 Years Equipment Total</b>					<b>\$43.00</b>



# Path to Partnership

WO: 173871

Inyo County

Quote Expires:  
08/18/2020

## Voice Pricing

### Voice Pricing

<u>Address</u>	<u>Product Services</u>	<u>Qty</u>	<u>MRC</u>	<u>Total MRC</u>
168 N. Edwards Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
<b>Location Total</b>				<b>\$523.25</b>
550 S Clay St Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
<b>Location Total</b>				<b>\$523.25</b>
<b>Voice Total</b>				<b>\$1,046.50</b>

### SIP LD Packages

	500	1,000	2,500	5,000	10,000	20,000	50,000	75,000	100,000	150,000	200,000	300,000
Minutes	500	1,000	2,500	5,000	10,000	20,000	50,000	75,000	100,000	150,000	200,000	300,000
Customer Price	\$16.00	\$30.00	\$70.00	\$125.00	\$240.00	\$400.00	\$850.00	\$1,125.00	\$1,300.00	\$1,750.00	\$2,150.00	\$3,100.00
Overage	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045



## Network Integration Rates

Granite Site Survey - \$199

**Refunded upon moving forward with Granite services**

**Site Survey Scope of Work (SOW):**

**Activity Specific Assumptions:**

Regular business hours.

1 hour of travel time for the technician.

The tech will be onsite for 1 hour.

Additional time will be billed at a rate of \$99.00 per hour in 30 minute increments.

The technician will not be required to move, add, change or disassemble any components in order to recover the site survey information.

A Granite licensed contract technician will arrive at the designated site, make contact and confirm their arrival with the location's local contact (LCON). This person should be familiar with the scope of the project and basic technical needs of the location. The technician will locate the designated work area required for completion of the site survey. The technician will then record all requirements for cabling. Upon completion of this Site Survey, the technician will inform the LCON that the survey has been completed for release authorization. The site survey scope of work (SOW) findings will be included with recommendations in a formal proposal for customer review within ten (10) business days after the survey is completed.

Granite Professional Services - \$250.00, per hr

**Granite will assist customer at an hourly rate with network consulting, systems integration, implementation and/or technical support that is outside of the original scope or work. Additional charges, over the Professional Services fees, for equipment, time and materials and on-site technical labor may apply.**



**GOVERNMENT ACCOUNT FORM  
AND LETTER OF AGENCY**

Sales Rep: Luke Owens

Order Date:

**MULTI-SERVICES**

**CUSTOMER INFORMATION**

Government Entity Name ("Customer"); Inyo County

Billing Telephone Number: 760-878-0292

Designated Contact: Scott Armstrong

Contact Phone Number: 760-878-0390

Service Address (Street/Suite): See Appendix A-1

Mailing/Billing Address (Street/Suite): 168 N. Edwards

City: Independence

State/Zip Code: CA/ 93526

Additional Comments/Notes (if any):

**AGREEMENT AND AUTHORIZATION**

By signing this Government Account Form and Letter of Agency ("LOA"), Customer hereby (a) engages Granite Telecommunications, LLC and/or its affiliates ("Granite") to provide Services as set forth in Appendix A, attached hereto and incorporated herein, and such other Services as Customer may order from time to time after the date hereof and (b) authorizes and appoints Granite to act as its agent solely for the purposes of handling all arrangements for establishing, converting, ordering, changing and/or maintaining such Services, and to take such other actions as are reasonably necessary to provide such Services and as Customer may request from time to time. Customer directs its current service provider(s), if any, to work with Granite to affect these changes.

Services Under this Agreement shall be for 3 years, commencing on \_\_\_\_\_, 2020. Customer can cancel services at any time given 30 (thirty) days written notice.

The Terms of Service set forth rights and responsibilities of Customer and Granite concerning Services to be provided and in regards to other important topics. If Customer does not agree to the Terms of Service, the authorized representative of Customer should not sign this LOA. All terms and conditions of the Terms of Service are incorporated herein by reference.

*This LOA is confidential and may not be disclosed to third parties except to the extent required by applicable law, or as required by an approving board or other authority for purposes of evaluating, approving and effectuating its terms..*

**SIGNATURE**

The undersigned is authorized to sign on behalf of Customer and Customer agrees to be bound by the Terms of Service. This LOA is effective as of the date of execution below.

**Customer**

By: \_\_\_\_\_

Print Name: Scott Armstrong

Title: Information Services Director \_\_\_\_\_

Date: \_\_\_\_\_

*Signing this Government Account Form and Letter of Agency will result in a change of service provider(s).*

{999997-016/00031993-1}

Government Account Form and LOA (Multi-Services)  
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**Appendix A**

**Services Selected**

- Voice Services (POTs, Long Distance, Local and LD T1 and PRI) (See Note 1)
- Broadband Services
- MPLS and/or Dedicated Internet Access Services
- VoIP Services (Hosted PBX, SIP Trunking, SIP PRI, Hosted Voice, Voice over Cable, Virtual Auto Attendant and Virtual Voicemail Services)
- Mobility Services (Mobility Data and Mobility Voice)
- Granite Grid Services
- Conferencing Services (Audio Conferencing and Web Conferencing)
- Managed Services
- Monitoring Services
- Other Services (List): \_\_\_\_\_  
\_\_\_\_\_

*Note 1: Unless otherwise noted herein, in addition to these rates and charges set forth in this LOA (a) certain other rates and charges may apply, as provided for by tariff, the FCC or other governmental entity, or other regulation or requirements and (b) Customer will pay to Granite all applicable taxes (including sales, use and excise taxes). In the event that Customer elects additional services, additional fees may apply. Customer acknowledges that it will be charged in accordance with the rates and plans listed on Appendix A-1, attached hereto and incorporated herein, plus any and all additional charges as may be set forth in the Terms of Service.*

*Note 2: See quote and other documents attached hereto as Appendix A-1 for specific details related to Services ordered.*

## Appendix A-1

### Service Locations and Specifics

168 N. Edwards Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
<b>Location Total</b>				<b>\$523.25</b>
550 S Clay St Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
<b>Location Total</b>				<b>\$523.25</b>

State of California Multiple Award Schedule:  
Granite Telecommunications, LLC  
CMAS Number: 3-19-70-3749A

The following, attached “Terms and Conditions of Service” and “Service Level Agreements” documents are applicable to this service agreement:

- General Terms and Conditions of Service
- VoIP Services Service Level Agreement
- VoIP Services Additional Terms and Conditions of Service
- Access Services (Off-Net Services) Service Level Agreement
- Access Services Additional Terms and Conditions of Service

{999997-016/00031993-1}

Government Account Form and LOA (Multi-Services)  
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## **GENERAL TERMS AND CONDITIONS OF SERVICE**

Services referenced in the Agreement are offered to Customer by Granite.

Customer shall contract for, and order, Services on Service Order Documents and using procedures acceptable to Granite in all respects.

The offer, provisioning and delivery of Services are subject at all times to the receipt by Granite of all required approvals and/or authorizations from regulatory agencies having jurisdiction over Services or Granite.

The Agreement is entered into by and between Customer and Granite. Customer has, and is deemed to have, accepted to be bound by these General Terms of Service and any Additional Terms of Service, including all terms and conditions incorporated therein or herein by reference upon: (a) Customer submitting a service order for Services; (b) Customer signing Service Order Documents or other documents stating that Customer has accepted such terms; and/or (c) Customer receiving and using Services without Service Order Documents or other documents as described herein.

### **General Terms and Conditions**

#### **1. Definitions; Interpretations.**

1.1 **Definitions.** Except as otherwise defined herein, capitalized terms shall have the meanings ascribed to them as set forth in Attachment A, attached hereto and incorporated herein or the applicable Additional Terms of Service. Words or expressions not defined are to be construed as having the meaning generally attributed to them in the telecommunications industry. All capitalized terms defined in the Agreement include the plural as well as the singular.

1.2 **Attachments.** The following are attached hereto and incorporated herein:

- (a) Attachment A - Definitions
- (b) Attachment B - Escalation Procedures
- (c) Attachment C - Internet Based Services – Additional Terms and Conditions of Service

1.3 **Interpretation.** In the event of any inconsistencies between the documents comprising the Agreement, and only to the extent of such inconsistencies, the interpretation of the Agreement shall be controlled by the following order of precedence (from the most to the least controlling): (a) any applicable filed and effective tariff, if any; (b) the applicable Additional Terms of Service; (c) these General Terms of Service; and (d) the provisions of quotes, Service Order Documents and/or other written document(s) accepted by Granite. In the event that Granite and Customer execute a separate master services agreement, then that master services agreement shall fall before these General Terms of Service in the order of precedence. This order of precedence notwithstanding, terms and conditions including pricing contained in any other writing will be controlling, if specific agreement language permits.

#### **2. Agreement to Provide Services.**

2.1 **Services.** Subject to the terms and conditions of the Agreement, and in consideration of the payments for such Services ordered by Customer in accordance with Service Order Documents, Customer has agreed to purchase, and Granite shall provide, the Services in accordance with the Agreement. Granite shall be responsible for the performance of all of its obligations under the Agreement, including those that it performs through Providers and other subcontractors. Customer may designate Authorized Users for the Services at the Rates and Charges and on the terms and conditions set forth in the Agreement. Customer shall be financially responsible for any Authorized User's purchase of Services. Unless otherwise consented to by Granite, Services may only be used by Customer, Authorized Users and their respective end users and may not be resold. Customer is solely and entirely responsible for the management and backup of all of Customer's data, and all updates, upgrades, and patches to any software that Customer uses in connection with Services. All Services are for Customer's own commercial use only and are not for resale.

2.2 Minimum Commitment. Except as otherwise provided for in these General Terms of Service or any Additional Terms of Service, nothing in the Agreement shall be construed as obligating Customer to order any particular minimum volume of Services.

2.3 Additional Terms of Service. Certain Services including, without limitation, Broadband Services, Dedicated Internet Access Services, MPLS Services, VoIP Services, Granite Grid Services and Managed Services, may be subject to additional terms and conditions (including, without limitation, initial minimum Service Terms and Early Termination Fees) as referenced in these General Terms of Service or the applicable Additional Terms of Service, specific Service Order Documents for such Services and/or other writings accepted by Granite.

2.4 Customer Authorization. Customer hereby (a) engages Granite and/or its affiliates to provide Services as set forth in Service Order Document(s) or as Customer may order from time to time and (b) authorizes and appoints Granite to act as its agent solely for the purposes of handling all arrangements for establishing, converting and/or maintaining Services, including ordering, changing and/or maintaining such Services, and to do such other things reasonably necessary to provide such Services and as Customer may from time to time request. To subscribe to Services, Customer must have executed an LOA for such Services in the form attached hereto or as otherwise approved by Granite in its sole discretion.

#### 2.5 Equipment.

(a) Customer shall procure and make available to Granite, at Customer's locations where Services are provided, at Customer's sole cost and expense, adequate space, continuous electrical service (AC power) to CPE and HVAC for CPE. Unless Customer engages Granite to provide specific additional services, Customer shall be solely and exclusively responsible for all CPE maintenance, configuration, management and/or support and Granite will have no obligation to install, maintain, or repair CPE unless otherwise specified in the applicable Service Schedule or Service Order Document. Notwithstanding, in response to Customer's request, Granite may replace failed CPE. Customer will be invoiced for such replacement CPE and shipping. In the event that the CPE failure is covered by manufacturer warranty, Granite shall issue a credit for the invoiced replacement CPE proportionate to the manufacturer warranty coverage.

(b) In the event that Customer does not satisfy payment obligations and commitments associated with CPE, Granite reserves the right to (a) require Customer shall return such CPE to Granite in good condition, ordinary wear and tear excepted, otherwise Customer shall be liable for the replacement cost of such CPE plus a restocking fee as determined by Granite in its sole discretion; and, or (b) require Customer to pay an amount equal to or less than the outstanding payment obligations for such CPE. CPE not used in the design and/or implementation of Services and returned to Granite or returned to Granite as a result of cancellation and/or early termination of Services is subject to a restocking fee, as determined by Granite in its sole discretion.

(c) CPE provided as part of the Services shall solely carry the manufacturer's warranty and shall not be covered under any other Granite warranty or representation.

(d) CPE risk of loss shall pass to Customer upon shipment from origin. Shipments shall be performed at then standard common carrier rates for two-day standard shipping unless otherwise agreed between the Parties. Customer will be invoiced for all shipping costs. Customer's signature is required on delivery; Granite will use reasonable efforts to provide Customer with updates regarding common carrier delays.

#### 2.6 Provisioning of Services.

(a) Customer, at its own expense, shall secure throughout the Service Term any easements, leases, licenses or other agreements necessary to allow Granite to use pathways into and in each building at which Customer's or its end user's premises is located, to the Demarcation Point. Such access rights shall grant to Granite the right, without the requirement of notice, to access such premises during business hours of each location and as otherwise reasonably requested by Granite to install, maintain, repair, replace and remove any and all equipment, cables or other devices Granite deems necessary to provide Services. Granite, its employees, contractors and/or agents shall have access to any facilities at Customer premises. Notwithstanding anything to the contrary herein, Granite shall have no liability for any delay or failure in its performance to the extent caused by any delay or failure

of Customer (including, but not limited to, the failure to provide Granite prompt access) and/or caused by any notice or access restrictions or requirements. Unless Customer engages Granite to provide specific additional services, Customer is responsible, at its sole cost and expense, for connecting to the Demarcation Point.

(b) Granite may reject any order for Services that is not in accordance with the provisions of the Agreement or if Granite is unable to provision such Services as ordered.

(c) Granite is not responsible for loss of income or time due to an order not being completed within the time frame desired, service outages, missed appointments, and/or trouble ticket dispatches. Granite is not responsible for any delays in provisioning or failures of Services related to inaccurate information provided by Customer and/or changes in Customer's network that are not communicated to Granite.

(d) Should a new order be placed for a Service, a Provider may find it necessary to migrate services from Customer's former service provider in order to complete Customer's installation. This may occur without warning during the course of Customer's order. Customer is ultimately responsible for identifying this prior to initial order placement as well as handling any outstanding contractual obligations with Customer's former service provider.

(e) An individual, who is authorized and has the capacity to act on behalf of Customer, must be present to grant access so that the technician can complete his/her work. In the event that there is no such individual present at the scheduled time of the technician visit, and notification was not provided to Granite at least two (2) business days in advance, there may be a missed appointment fee or other similar charge. Similarly, a no access fee may be charged if a technician is denied access to the Demarcation Point due to a locked facility, or by the actions of third parties. If Granite dispatches a field technician to Customer location and the problem is caused by (i) CPE or (ii) any acts or omissions of Customer or any of its end users, invitees, licensees, customers, agents or contractors, Customer will pay Granite for any and all associated time and materials at Granite's then standard rates.

(f) If Customer pre-authorizes inside wiring during order placement, Customer is financially responsible for any and all applicable fees for such inside wiring services. If Customer chooses not to pre-authorize inside wiring work, and it is determined that additional wiring is needed to complete Customer's installation, it is Customer's responsibility to ensure the necessary wiring is completed by Customer or a third party vendor.

(g) If any services are performed by any other vendor then Customer is subject to the terms and conditions that vendor may establish for providing such services and Granite is not responsible for, and assumes no liability or provide warranties for, such services.

(h) Any technical support that Granite provides is limited to the connectivity of Services. Support for other applications and uses is not provided or implied unless it is a specifically contracted service.

2.7 Maintenance. Granite and its Provider(s) may interrupt Services for maintenance and other operational reasons, and except as otherwise provided herein, Customer shall not be entitled to receive any remuneration for such interruptions. Granite will use reasonable efforts to notify Customer when possible. Providers may perform emergency maintenance on Services in their respective sole and absolute discretion, with or without prior notice to Customer, to preserve the overall integrity of such Provider's network. Granite will use commercially reasonable efforts to notify Customer as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts any Services.

## 2.8 Modifications to Services; Service Moves.

(a) Granite may modify from time to time, and in any way, without limitation, any data, software, or hardware used to provide Customer with Services. Certain changes to Services may affect the operation of Customer's personalized applications and content. While Granite will work with Customer to provide proper notice of such changes, Customer is solely responsible, and Granite is not liable, for any and all such personalized applications and content, except as expressly agreed to by Granite.

(b) In the event of a Services move (i.e. if Customer moves and has Services installed at the new location), a new initial minimum Service Term will begin again from the Service Start Date at the new location. Additionally, in the event of a switch from another service provider to Granite, the initial minimum Service Term will begin from the date that the service provider switch is completed. Requests to have Customer's Services changed with a specific order to an alternate service provider at any time during an active Service Term may be subject to a fee to cover Granite's provisioning expenses.

2.9 Service Level Agreements. SLAs for Services, if any, are determined on an individual case basis and will be set forth in the Additional Terms of Service or a separate SLA document (as set forth at [www.granitenet.com](http://www.granitenet.com) or otherwise communicated to Customer at the time it makes its service order).

2.10 Fraud, Abuse and/or Unauthorized Use of Services. The Parties agree that Customer shall be responsible for any fraud, abuse and/or unauthorized use of Service(s) by Customer, its employees, end users, or any other third party. Customer shall not be excused from paying for Service(s) provided to Customer, or any portion thereof, on the basis that fraud, abuse and/or unauthorized use of Service(s) comprised all, or any portion of, the Service(s). In the event Granite discovers fraud, abuse and/or unauthorized use of Service(s), nothing contained herein shall prohibit Granite from taking any immediate action (without notice to Customer) that Granite deems to be reasonably necessary to prevent such fraud, abuse and/or unauthorized use of Service(s) from taking place including, without limitation, blocking or terminating Service(s), provided, that Granite shall not be required under any circumstances to take such action. Customer will defend and indemnify Granite, its employees, directors, officers and agents from and against any suit, proceeding or other claim, damages, costs and expenses brought by an entity (not a party to or an Affiliate of a party to the Agreement) that is caused by, arises from, or relates to fraud, abuse and/or unauthorized use of Service(s).

2.11 IP Addresses. Customer agrees that any IP address assignments and allocations from Granite are based on the address lending policy of American Registry for Internet Numbers and applicable agencies. It is an express condition of the Agreement, the use of Services and the loan of such IP addresses that such assignments and allocations shall terminate and the IP addresses shall be returned to Granite when the Agreement and/or any applicable Exhibit or Services expire or are terminated. Granite reserves the right to recover any address space due to inadequate utilization or an AUP violation.

### **3. Rates and Charges; Billing and Payment.**

#### **3.1 Rates and Charges.**

(a) Rates and Charges for Services are as set forth in the Service Order Documents or as otherwise communicated to Customer at the time of ordering such Services and may vary depending on Service type, features, equipment and other costs required to deliver the Service to Customer. Except as otherwise provided for in these General Terms of Service, any Additional Terms of Service or any Service Order Documents, (a) the Rates and Charges for Services are the Rates and Charges applicable as of the Effective Date of such specific Services and (b) the Rates and Charges may be changed by Granite at its discretion, provided, that Customer shall be given prior written notice of any such change. All Rates and Charges for the Services set forth in any preliminary quote are subject to final approval and acceptance by Granite. There will be a rebill fee (equal to the then-current charge assessed to similarly situated customers of Granite) applied on all Services ordered that are not ordered on Granite's wholesale platforms including, but not limited to, those Services not subject to any discount from the Provider and/or any Services that are rebilled by Granite for Customer. All additions to Services are recognized as non-refundable regardless of utilization by Customer.

(b) Granite may modify the Rates and Charges at any time: (a) for new orders; (b) for Services that are on a month to month term; and (c) upon thirty (30) days' prior written notice to Customer, for any Services that are outside the initial minimum Service Term or any renewal Service Term. In addition, if any of the prices charged to Granite by any of its Provider(s) increase, Granite reserves the right to increase the price charged to Customer (including, but not limited to, during the initial minimum Service Term or any renewal Service Term selected by Customer), effective upon thirty (30) days' prior notice to Customer, provided, if Customer does not agree to accept such new pricing then Customer may terminate the affected Services without penalty upon thirty

(30) days' prior written notice. Any continued use of Services thirty (30) days after the notice date shall be deemed acceptance of the new Rates and Charges.

### 3.2 Billing; Payment.

(a) Granite shall use commercially reasonable efforts to accurately and promptly bill Customer for the Rates and Charges applicable to Services and other related charges, including, without limitation, applicable surcharges and taxes. Billing will commence on the Service Start Date of each specific Service. Customer will be financially responsible for all service time thereafter unless Granite is notified within a timely manner (meaning within five (5) days of the Service Start Date) of an outstanding issue which Granite deems to justify service credit. Granite shall invoice Customer monthly in advance for all monthly recurring charges for Services to be provided during the following month, and shall invoice all other charges, including but not limited to, non-recurring charges and usage charges, if any, in arrears. All payments received by Granite will be applied to the oldest unpaid invoice in relation to Customer's account. Payments will be due upon receipt of Customer's invoice. Beginning thirty (30) days following the date of Granite's invoice, Granite may charge late fees to Customer on the amount of the outstanding balance owed by Customer to Granite in the amount up to or the highest amount allowed by applicable law. If a payment in any form is recovered or otherwise not paid by Customer's financial institution, there may be a returned payment fee. Acceptance of any late or partial payment (even if marked "paid in full" or with other words of similar effect) shall not waive any of Granite's rights to collect the full amount of Customer's charges for the Services. Granite charges for Services continuously regardless of whether or not Customer is utilizing such Services because Granite and/or its Provider(s) continue to maintain Customer's connection, reserve IP space, accept mail and/or keep files Customer has saved in Customer's account on Granite's servers (if applicable) and this also applies to accounts that are suspended (denied access) due to non-payment.

(b) All Rates and Charges assume that Customer pays Granite using a form of payment that will not result in Granite incurring additional fees and/or charges from any third party (i.e. a discount for cash payment). To the extent that does not occur, and Granite incurs any additional fees and/or charges, Granite reserves the right to charge Customer Rates and Charges higher than those quoted in the Agreement, any Service Order Documents or as otherwise communicated to Customer at the time of ordering such Services.

(c) If Customer fails to pay any undisputed and overdue amount within ten (10) days from the date of any written notice from Granite requesting such payment, Customer shall also pay all of Granite's reasonable costs of collection, including but not limited to reasonable attorney's fees. In the event Customer's account is in arrears, Granite may, upon written notice to Customer, suspend its provision of Services under the Agreement in whole or in part until Customer's account has been brought current.

3.3 Billing Disputes. Customer may dispute in good faith any charge by contacting a Granite account representative in writing or by e-mail of the specific nature and amount of the dispute, and, if Customer has already paid such charge, may seek a refund of such payment ("Billing Dispute Notification"). Customer must pay all amounts, whether or not in dispute, by the due date. All claims must be submitted to Granite within ninety (90) days of the date of Granite's invoice for the Services for which charges are disputed, or the billing shall be deemed correct and Customer waives all rights to file a claim. Upon receipt of a Billing Dispute Notification, Granite shall promptly commence an investigation of the dispute and will use commercially reasonable efforts to resolve such dispute within thirty (30) days. No interest, credits or penalties will apply with respect to the disputed amounts during the pendency of the dispute. If Granite determines that Customer is entitled to a credit, Customer shall receive a credit on Customer's next invoice. Notwithstanding the foregoing, Section 3.2(c) shall also apply to any amounts which Customer disputes in good faith that are ultimately determined to have been due and payable to Granite.

### 3.4 Taxes and Other Charges.

(a) Customer will pay to Granite all federal, state and local taxes (including sales, use and excise taxes) that are measured directly by the payments made by Customer to Granite under the Agreement and are required to be collected by Granite, provided, however, that in no event shall Customer be obligated to pay any of Granite's franchise taxes, taxes based on Granite's net income, business and license taxes, property taxes for which Customer is exempted by law, or any penalties associated with Granite's failure to properly remit taxes.

(b) Certain other rates, charges, surcharges and/or fees may apply, as provided for by tariff, the FCC, other governmental entities, applicable law or other regulation or requirements. Customer shall be responsible for payment of all surcharges, regulatory fees and/or programs, however designated, imposed on or based upon the provision, sale or use of Services, and for certain other variable expenses incurred by Granite as a result of local, state or federal regulation, including, its payments to government entities and agents and Provider(s) and its internal costs of compliance associated with taxes and regulatory fees and programs including, but not limited to, 911 access, universal service programs, franchise fees, FCC and state regulatory fees, and/or utility, telecommunications, excise or other taxes not recovered by Customer through a separate line item. Granite may charge a single, separate surcharge because of the fluctuation of such aforementioned regulatory surcharges. Customer agrees to pay all invoiced regulatory surcharges.

### 3.5 Termination and Cancellations Fees.

(a) Customer agrees that damages for termination or cancellation of Services are difficult or impossible to ascertain and the damages set forth in the Agreement including, without limitation, the Early Termination Fees or cancellation fees, are intended to serve as liquidated damages and not a penalty and such fees and charges are reasonable.

(b) In the event that Customer cancels all or any portion of any Services (i) after ordering such Services but prior to the acceptance of such order by Provider(s) or (ii) after the acceptance of such order by Provider(s) but prior to the Service Start Date, Customer may be subject to cancellation fees or charges (which fees or charges may vary by specific Service depending on Provider(s)). In addition, Customer shall pay to Granite, immediately upon demand any and all actual expenses incurred by Granite to order, survey, engineer, activate, install (including construction charges) and/or terminate Services, including, but not limited to, any additional early termination/cancellation penalties as assessed by Provider(s).

(d) Granite may charge a cancellation fee to Customer if a scheduled loop drop, cutover and/or installation is cancelled with less than 24 hours' notice.

(e) After Granite provides thirty (30) days' prior notice to Customer of specific site requirements for Services to be provided, if Customer does not (a) meet said requirements by the end of such 30-day period; or (b) provide Granite with a reasonable date (meaning within 15 days after the end of such 30-day period) upon which such site requirements will be met by Customer, then Granite may cancel the order for the Services and charge a cancellation fee to Customer, then Customer shall pay to Granite, immediately upon demand, any and all actual expenses incurred by Granite to order, survey, engineer, activate, install (including construction charges) and/or terminate Services, including, but not limited to, any additional early termination/cancellation penalties as assessed by Provider(s).

3.6 Credit Terms. Granite reserves the right to perform a credit review and/or approval. Granite reserves the right, at its sole discretion, to (a) either decline or cancel a service order without liability to either Party or (b) require appropriate advance deposits, prepayment of certain charges and/or other security for Services.

## 4. Term and Termination.

4.1 Term. The term of the Agreement shall begin on the Effective Date of such Services and continue until terminated as set forth herein (the "Term").

### 4.2 Termination.

(a) Except as provided in Section 3.2, either Party may terminate the Agreement or specific Services upon thirty (30) days' written notice to the other Party. Notwithstanding the foregoing, Early Termination Fees (as set forth in these General Terms of Service or any Additional Terms of Service) shall apply to certain Services having an initial minimum Service Term (other than month to month) that are terminated for any reason prior to the end of the initial minimum Service Term or any renewal Service Term selected by Customer.

(b) It is Customer's responsibility to notify Granite of any cancellation or termination of Services in writing. All disconnection requests will be processed on the date the request is received. This applies to both total account and specific Service terminations. Returning hardware at the completion of the Service Term, or cessation of payment or use of Services does not constitute notification of cancellation. If Customer does not provide notice of Customer's intent not to renew Services after the end of the initial minimum Service Term, Services shall renew and continue in accordance with these General Terms of Service, any Additional Terms of Service or Services Schedules, and continue to be subject to the Agreement, including, without limitation, application of Rates and Charges. The terminated Services may be subject to Early Termination Fees and such Early Termination Fees will be applied and due at that time. Upon termination, Services will be discontinued and all files will be removed from Granite's servers (if applicable) without further notice.

(c) If Customer wishes to reinstate any Services with Granite, Customer may be required, at Granite's sole and absolute discretion, to (i) pay all outstanding charges from the inception of Customer's Service continuously to the current month of reinstatement, which is always paid in advance; (ii) require a cash deposit, standby letter of credit and/or other security; and/or (iii) charge a reinstatement fee. If Customer wishes to reinstate Customer's account, Customer will be subject to any and all installation and setup charges in effect at the time of reinstatement order placement, as well as any pertinent outstanding charges from Customer's former account.

4.3 Suspension of Services. Without prejudice to its other rights, Granite shall have the right to suspend Services immediately by written notice to Customer if Customer engages in criminal or willful tortious misconduct with regard to the Services, carries out any fraudulent activity with the intention of misleading or obtaining benefit from Granite and/or violates the AUP. Services which are within an active Service Term that are terminated due to violation of the Agreement including, without limitation, the AUP, will be assessed Early Termination Fees.

4.4 Survival. Notwithstanding anything to the contrary contained herein, any term or provision which by its nature extends beyond expiration or termination of the Agreement shall survive any such expiration or termination and remain in effect until fulfilled and shall apply to respective successors and assigns.

4.5 Service Terms. Unless otherwise provided for in these General Terms of Service, any applicable Additional Terms of Service or any Service Order Documents, all Services shall have a Service Term of month to month and, unless otherwise terminated in accordance with the Agreement, shall automatically renew on a month to month basis.

## 5. Insurance.

5.1 Coverages. Granite shall maintain from and after the Effective Date, and until the expiration or termination of the Agreement, insurance of the following kinds and amounts (either under the existing policies or by applying additional coverage available under any umbrella liability policy to the existing policies) or in the amounts required by law, whichever is greater: (a) Worker's Compensation and Employer's Liability Insurance affording (i) protection under the Worker's Compensation Law of the state in which work is to be performed or containing an all-states endorsement and (ii) Employer's Liability protection subject to a limit of not less than \$1,000,000; (b) Commercial General Liability Insurance written on an occurrence basis in an amount not less than \$1,000,000 per each occurrence, which insurance shall include (i) products and completed operations liability coverage and (ii) contractual liability coverage for the liabilities assumed by Granite under the Agreement (upon written request from Customer, the commercial general liability insurance shall name Customer as an additional insured); (c) Automobile Liability Insurance for hired and non-owned vehicles in an amount not less than \$1,000,000 combined single limit; and (d) Professional Errors and Omissions Liability Insurance with a limit of \$5,000,000.

5.2 Additional Terms. All insurance policies required to be maintained under Section 5.1 shall be procured from insurance companies rated at least A-VIII or better by the then current edition of Best's Insurance Reports published by A.M. Best Co. Granite shall provide Customer with certificates of insurance evidencing the required coverage concurrently with the Effective Date and upon each renewal of such policies thereafter, as reasonably requested by Customer. This Section 5 shall in no way affect the indemnification, limitation of liability, remedy and/or warranty provisions set forth in the Agreement.

**6. Indemnification.**

6.1 Mutual Indemnification. Granite and Customer shall indemnify and hold each other, their Affiliates and their respective shareholders, members, managers, officers, directors, partners, principals, employees, agents, successors and permitted assigns harmless against Damages arising out, relating to, or resulting from of third party claims resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) or loss of or damage to real property or tangible personal property, to the extent that such Damages were proximately caused by the negligent act or omission or the willful or intentional misconduct of the Party from whom indemnity is sought or its agents, employees or subcontractors, in connection with the provision or use of Services. Granite shall not be liable under this Section 6.1 for Damages caused by services or equipment that is not furnished by Granite under the Agreement.

6.2 Limitations. Granite shall not be liable for, and Customer indemnifies and holds Granite harmless from, any and all Damages arising out of, relating to or resulting from (a) the content of communications transmitted by Customer in its use of the Services, including but not limited to libel, slander and/or invasion of privacy and/or (b) allegations that Customer or its end user have infringed the intellectual property rights of any person or entity.

6.3 Procedures. The indemnified Party under this Section 6: (a) must notify the indemnifying Party in writing promptly upon learning of any claim, suit or other action for which indemnification may be sought, provided, that failure to do so shall have no effect except to the extent the indemnifying Party is prejudiced thereby; (b) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the indemnifying Party shall have control of the defense or settlement, provided, that in the event that any settlement materially and adversely affects the price or performance of Services in use by Customer and Granite is unable to provide to Customer, at no additional cost to Customer, alternative Services that meet Customer's reasonable business needs, Customer shall be permitted to terminate the affected Service without liability upon thirty (30) days' prior written notice to Granite; and (c) shall reasonably cooperate with the defense, at the indemnifying Party's expense.

**7. Limitation of Liability; Warranties.**

7.1 EXCLUSIONS.

(A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXPECTANCY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, DELIVERY OF SERVICES, OR DELAY IN INSTALLATION OF SERVICES. THE LIMITATIONS OF LIABILITY SET FORTH IN THESE GENERAL TERMS OF SERVICE SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE AND WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THESE GENERAL TERMS OF SERVICE.

(B) GRANITE SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (I) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (II) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (III) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (IV) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

(C) GRANITE IS NOT RESPONSIBLE FOR ANY INFORMATION OR CONTENT TRANSMITTED OVER SERVICES. GRANITE DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED BY CUSTOMER OR ANY OF ITS END USERS, INVITEES, LICENSEES, CUSTOMERS, AGENTS OR CONTRACTORS FROM, OR THAT IS TRANSMITTED OVER SERVICES.



7.2 LIMITATION OF LIABILITY. A PARTY'S ENTIRE LIABILITY, AND THE OTHER PARTY'S EXCLUSIVE MONETARY REMEDIES, FOR ANY DAMAGES CAUSED BY ANY SERVICE DEFECT OR FAILURE (SUBJECT TO SLAs FOR SPECIFIC SERVICES, IF ANY) OR FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICES OR OBLIGATIONS OF GRANITE UNDER THE AGREEMENT SHALL BE AS SET FORTH BELOW:

(A) FOR BODILY INJURY OR DEATH TO ANY PERSON, OR DAMAGE TO REAL PROPERTY OR TANGIBLE PROPERTY NEGLIGENTLY CAUSED BY A PARTY OR ARISING OUT OF A PARTY'S WILLFUL ACTS OR OMISSIONS, OR DAMAGES ARISING FROM ANY BREACH OF SECTION 13 (CONFIDENTIAL INFORMATION), THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES; AND

(B) FOR LOSSES, DAMAGES, AND CLAIMS ARISING OUT OF THE DELIVERY OF SERVICES AND/OR PRODUCTS INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES OR THE GRANITE EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT, IF ANY (PROVIDED, IN NO EVENT SHALL SUCH SERVICE CREDIT EXCEED THE AMOUNT OF CREDITS RECEIVED FROM PROVIDER(S)) AND ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED HEREIN OR THE APPLICABLE SERVICE LEVEL AGREEMENT; AND

(C) FOR DAMAGES OTHER THAN THOSE SET FORTH IN SECTIONS 7.2(A) AND 7.2(B) AND NOT OTHERWISE EXCLUDED UNDER THE AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED THE LESSER OF (I) \$1,000,000 OR (II) THE ACTUAL BILLINGS FOR SERVICES UNDER THE AGREEMENT FOR THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT FOR THE SPECIFIC SERVICES GIVING RISE TO SUCH CLAIM FOR DAMAGES.

7.3 EXCEPTIONS TO LIMITATION. NOTHING SET FORTH IN THIS SECTION 7 SHALL LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL CHARGES PROPERLY DUE GRANITE OR GRANITE'S RESPONSIBILITY FOR ANY CREDITS (INCLUDING SERVICE CREDITS, IF ANY) OR REFUNDS OF OVERCHARGES BY GRANITE FOR SERVICES RENDERED, IF ANY.

7.4 Warranties.

(a) Granite warrants that the Services will be performed in a professional manner pursuant to generally accepted industry standards and practices for similar Services.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GENERAL TERMS OF SERVICE, ANY ADDITIONAL TERMS OF SERVICE OR THE SLAs FOR A SERVICE, IF ANY, GRANITE DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY (I) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) ARISING BY USAGE OR TRADE PRACTICES, COURSE OF DEALING OR COURSE OF PERFORMANCE; (III) THAT THE SERVICES ARE ERROR FREE, UNINTERRUPTED OR SECURE FROM THIRD PARTY ATTACK; (IV) THAT SERVICES ARE FREE FROM DEFECTS, FIT TO BE SOLD, WILL PERFORM IN A PARTICULAR MANNER OR SPEED OR TO A PARTICULAR STANDARD OR ANY QUALITY OF SERVICE. GRANITE SPECIFICALLY DISCLAIMS ANY OTHER IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES.

(c) Granite is not ultimately responsible for the quality and/or performance of Customer owned or provided software or hardware, including without limitation, private branch exchange, interface equipment, personal computer and/or any modifications Customer makes to any equipment supplied through Granite. Granite is not responsible for failings in individual operating systems and custom configuration of operating systems, operating system components, software, hardware, and/or inside wiring. Granite agrees to use commercially reasonable efforts to provide an equitable solution to Customer. Any mention of non-Granite products or services by Granite

and its employees or agents is for information purposes only and does not constitute an endorsement or recommendation by Granite. Granite disclaims any and all liabilities for any representation or warranty made by the vendors of such non-Granite products or services.

7.5 **Third Parties.** No contract, subcontract, or other agreement entered into by either Party with any third party in connection with the Services (including any such agreement assigned by Customer to Granite) shall provide for any indemnity, guarantee, assumption of liability and/or other obligation of/by the other Party to the Agreement with respect to such arrangements, except as consented to in writing by the other Party. The Agreement does not expressly or implicitly provide any third party (including Authorized Users) with any remedy, claim, liability, reimbursement, cause of action and/or other right or privilege. Customer and Granite intend that the Agreement shall not create any right or cause of action in or on behalf of any person or entity other than Customer or Granite.

7.6 **Other Matters.** For purposes of all remedies and limitations of liability set forth in the Agreement: (a) “Granite” and references to it as a “Party” means Granite, its Affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, Providers and suppliers and (b) “Customer” and references to it as a “Party” means Customer, its Affiliates, and Authorized Users, and its and their respective employees, directors, officers, agents, and representatives.

8. **Force Majeure.** Neither Party shall be liable under the Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to, an Act of God, fire, earthquake, flood, wind, water, the elements, geographic or climatic conditions, third party labor disputes, power failures, explosions, civil disturbances, riots, acts of terrorism, governmental actions or orders, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties or any cause beyond its reasonable control (a “Force Majeure”), provided, however, the foregoing shall not excuse a Party from its obligations to make payments when due under the Agreement. Nonperformance of Granite and/or its Provider(s) will be excused to the extent that performance is rendered impossible by a Force Majeure and shall suspend Granite’s and/or its Provider(s)’ obligations under the Agreement with respect to such Services until such Force Majeure ceases.

## 9. **Governing Law; Jurisdiction; Arbitration.**

9.1 **Governing Law.** The Agreement, and all claims and disputes arising hereunder or related hereto, will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to choice of laws, rules, or principles.

9.2 **Jurisdiction; Waiver of Jury Trial.** The federal and state courts located in Boston, Massachusetts, and any courts authorized to hear appeals from such courts, shall be the only courts with jurisdiction and venue to hear disputes under the Agreement. Both Parties and their successors waive a trial by jury of any and all issues arising in any action or proceeding between the Parties hereto or their successors, under or connected with the Agreement, or any of its provisions.

### 9.3 **Arbitration.**

(a) The Parties agree that, subject to an exclusion for any and all actions for collection of amounts due Granite under the Agreement, any dispute, controversy or claim in any way arising out of or relating to the Agreement or the breach hereof, will be resolved by arbitration using one (1) arbitrator and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect in Boston, Massachusetts. The Parties further agree that in any arbitration proceeding, they may conduct reasonable discovery pursuant to the arbitration rules, that the laws set forth in Section 9.1 shall be the governing law and any arbitration award or judgment rendered by the arbitrator will be enforceable in any court set forth in Section 9.2. Any arbitration under the Agreement will be held in Boston, Massachusetts.

(b) Notwithstanding anything to the contrary set forth in Section 9.3(a), the Parties acknowledge and agree that any breach or threatened breach of the Agreement, including, without limitation, Section 13 is likely to cause the non-breaching Party irreparable harm for which money damages may not be an

appropriate or sufficient remedy. Each Party therefore agrees that the other Party is entitled to receive injunctive relief or other equitable relief to remedy or prevent any breach or threatened breach of the Agreement. Such remedy is not the exclusive remedy for any such breach or threatened breach, but is in addition to all other rights and remedies available at law or in equity.

**10. Notice.** Notices from a Party concerning the Agreement must be written and delivered to the other Party at the address shown below (i) in person, (ii) by certified mail, return receipt requested, or (iii) by traceable overnight delivery. Notice will be effective upon delivery to the address shown below:

If to Granite:	Granite Telecommunications, LLC 100 Newport Avenue Ext. Quincy, MA 02171 Attention: Legal Department
If to Customer:	To the mailing/billing address set forth on Service Order Documents or as otherwise specifically provided by Customer to Granite

Notwithstanding the foregoing, notices with respect to the day to day use of Services by Customer may be communicated via fax or email, in accordance with Granite's policies and procedures as communicated to Customer from time to time.

**11. Independent Contractor; Work on Customer Premises.**

11.1 Relationship of the Parties. Granite's relationship to Customer in performing the Agreement is that of an independent contractor. The personnel performing services under the Agreement shall at all times be under Granite's exclusive direction and control and shall be employees or subcontractors of Granite and not Customer. Granite shall pay all wages, salaries, benefits and other amounts due its employees in connection with the Agreement and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters. Granite acknowledges and agrees that Granite is solely responsible to, and shall, collect, pay and withhold all federal, state or local employment taxes, including, but not limited to, income tax withholding, unemployment taxes and social security contributions for Granite's personnel, and that Customer shall have no obligation or liability with respect thereto. Any and all such taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of the Agreement will be paid or withheld by Granite or, if assessed against and paid by Customer, will be reimbursed by Granite upon demand by Customer.

11.2 Granite's Employees.

(a) Granite's employees, agents and subcontractors shall, whenever on Customer's premises, obey all reasonable instructions and security procedures and any other reasonable processes, policies, standards, procedures and directions issued by Customer.

(b) Granite shall require its employees to satisfy a commercially reasonable background investigation, which may consist of any or all of the following: confirmation of identity and personal information, social security verification, verification of all education beyond high school, credit report, employment verification and/or criminal record searches.

**12. Records and Audit Rights.** Granite agrees to maintain accurate business records, books and account information relating to the Services purchased by Customer under the Agreement, including records relating to shipping, billing and payments, and to retain the same for a period of at least three (3) years from the date of the last invoice for the applicable Service or for such longer periods as required by applicable law.

**13. Confidentiality and Proprietary Information.**

13.1 **Confidentiality.** Any and all information concerning the businesses of either Party provided by disclosing Party to the other Party, specifically including but not limited to pricing and other terms of the relationship between the Parties, including the terms contained the Agreement, whether or not labeled as “confidential,” “proprietary” or with words of similar effect, shall be considered confidential and proprietary by the other Party, and each Party hereby agrees that it will not permit the use or disclosure of any such information of the other Party, unless such use or disclosure is required by law or is authorized by such other Party. The restrictions on duplication and use of information in this Section shall not apply to any particular item of information that is (a) independently developed by the Party receiving such information without reference to such information; (b) is generally known to the public not through disclosure by the receiving Party; or (c) was received from a third party without any obligation or restriction on use or disclosure of such information. Notwithstanding anything to the contrary contained herein, the terms and conditions of any confidentiality agreement executed by the Parties prior to the Effective Date shall survive the Effective Date and shall remain in force and effect and are incorporated herein by reference.

13.2 **Intellectual Property.** Customer agrees that Granite owns and retains all right, title and interest in and to all of Granite’s owned or licensed intellectual property; including but not limited to, any and all derivative or collateral thereof (“Granite IP”), and acknowledges that Granite IP and the registration thereof are good, valid and enforceable in law and equity. Customer will not engage directly or indirectly in any activities which may contest, dispute or otherwise impair the right, title and interest of Granite in and to Granite IP. Granite shall own and retain all right, title and interest in and to all works, methods, processes, software, materials and know-how developed by Granite pursuant to or in connection with the Agreement (“Deliverables”). Granite retains all right, title and interest in and to any and all of its software, software development tools, know how, methodologies, processes, technologies or algorithms used in providing the Services which are based upon trade secrets or confidential or proprietary information of Granite or otherwise owned or licensed by Granite, whether or not incorporated into any Deliverables. Except as otherwise provided for herein, upon expiration or termination of the Agreement for any reason, any licenses shall cease. Customer is expressly prohibited from improving or modifying any Granite IP. Any such improvements or modifications made to Granite IP by or on behalf of Customer shall be a “work made for hire” and Customer shall assign all proprietary rights thereto, including copyrights, patents and trade secrets, to Granite. Customer agrees to execute any documents reasonably requested by Granite to secure and protect the proprietary rights and ownership thereof by Granite. Except with the consent of Granite, Customer shall not use any Granite trademark(s) (whether registered or common law marks), including, but not limited to, in advertising or marketing and shall not register any trademark(s) that is substantially similar to a trademark owned by Granite. Granite shall own and retain all right, title, and interest in and to the web portal website and all Granite documentation associated therewith and with the Services. To the extent, if any, provided by Granite as part of the Services, Customer agrees (a) not to reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine the source code of any Granite or other third party software or permit or authorize any third party to do so; and (b) that Granite provides, and Customer accepts, such software “as is” with no express or implied warranties, including merchantability, title, non-infringement or fitness for particular use. For purposes of this Section 13.2, “Granite” shall include Granite and its Affiliates.

#### **14. Miscellaneous.**

14.1 **Entire Agreement.** The Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations and understandings relating to the subject matter hereof.

14.2 **Amendment.** Except with respect to Granite tariffs, which are covered by notice requirements imposed by regulatory authorities and applicable law, unless notice of changes to these General Terms of Service, Additional Terms of Service or any other website terms and conditions are otherwise communicated to Customer (as set forth below), such changes will become effective and binding on Customer on the date such changes are posted on Granite’s website. No changes made by Granite shall serve to constitute a default or termination by Granite of the Agreement, nor shall such changes serve to be a basis for Customer’s termination of any Services or the Agreement. Notice of such changes may be furnished by (a) a message included with the invoice; (b) a postcard, letter or other mailing; (c) calling and speaking to Customer’s representatives; (d) e-mail; and/or (e) posting the changes on Granite’s website.

14.3 Severability. If any provision of the Agreement or part of said provision is determined to be invalid or unenforceable, the Agreement will be construed as if it did not contain such provision or part thereof.

14.4 Waiver. The failure of a Party to insist upon strict performance of any provision of the Agreement in any one (1) or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

14.5 Assignment. Neither Party may assign the Agreement, in whole or in part, without the other Party's written consent (which will not be unreasonably withheld, delayed and/or conditioned), provided, however, that no such consent is required in connection with (a) a merger, reorganization or sale of all, or substantially all, of such Party's assets or equity securities or (b) either Party's assignment of the Agreement in its entirety to an affiliate, provided, in the case of Customer, Customer shall remain liable for obligations under the Agreement unless specifically agreed to by Granite. Any attempt to assign the Agreement other than as permitted above is void. The Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

14.6 Work Product. The Agreement shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

14.7 English as a Language. Customer agrees to have the Agreement and all other contracts, invoices, correspondence and any and all other documents, agreements and writings in the English language. Le Client s'engage à avoir le compromis et tous autres contrats, les factures, toutes correspondances ainsi que tous autres documents ou accords écrits dans la langue anglaise. The Parties have specifically required that the Agreement and all related documents be drafted and executed in English.

14.8 Additional Terms and Conditions. Customer acknowledges that, in addition to the terms and conditions set forth in the Agreement, in any instance where Granite does provide Services using a Provider(s) or as an agent or broker of another provider/carrier, Customer may be subject to additional terms and conditions as set forth by such Provider(s) or other underlying provider(s)/carrier(s). Customer acknowledges and agrees that applicable tariff(s), the Additional Terms of Service, and the AUP are incorporated herein by reference and are binding on the Parties.

Dated and effective as of September 7, 2016.

## **Attachment A**

### **Definitions**

“Additional Terms of Service” means additional terms and conditions applicable to a specific service and/or product as set forth at [www.granitenet.com](http://www.granitenet.com).

“Affiliate” means any entity directly or indirectly controlling, controlled by or under common control with a Party. For purposes of this definition, such control means the direct or indirect power to vote fifty percent (50%) or more of the securities or comparable interests for the election of directors or other managing persons of the controlled entity.

“Agreement” means these General Terms of Service, any Additional Terms of Service, Service Order Documents and/or other written document(s) approved by Granite, including any incorporated attachments, appendices, schedules and/or exhibits, provided to or executed by Customer, and any applicable tariffs, if any.

“AUP” means Granite’s Privacy, Moderation of Use and Acceptable Use Policies as set forth at [www.granitenet.com](http://www.granitenet.com).

“Authorized User” means (a) Customer or (b) any Affiliate of Customer that uses Services offered under the Agreement and provided that Customer agrees to remain financially responsible for such Affiliate’s payment obligations for such Services.

“Business Day” means Monday through Friday, excluding New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

“Core Network” means Granite’s core network and associated equipment utilized to provide and deliver On-Net Services, whether owned, leased or otherwise obtained by Granite, between the points where traffic enters the core network equipment and the point where it leaves Granite’s core network equipment.

“CPE” means customer premises equipment.

“CSR” means customer service record.

“Damages” means, collectively, all injury, claims, damage, liability, loss, penalty, reasonable attorneys’ fees and costs, interest and expense incurred by a Party.

“Demarcation Point” means the network interface point where Granite and/or its Provider(s) hands off a Service to Customer, and which delineates where responsibility for the Parties’ respective networks, equipment and/or maintenance obligations begin and end.

“Early Termination Fee” means an amount charged to Customer by Granite if Customer terminates any specific Service prior to the end of such Services’ initial minimum Service Term or any renewal Service Term selected by Customer. The Parties agree that the Early Termination Fee is not a penalty but is liquidated damages.

“Effective Date” means the date on which Customer (a) submits a service order for Service; (b) executes a Service Order Document or other written document accepted by Granite; and/or (c) is receiving and using Services without Service Order Documents.

“General Terms of Service” means these General Terms and Conditions of Service applicable to all Services as set forth at [www.granitenet.com](http://www.granitenet.com).

“Internet Based Services” means all Services which utilize the Internet, including, without limitation, VoIP Services (including Hosted PBX Services, SIP Trunking Services and SIP PRI Services), MPLS Services and/or Data Aggregation Services.

“MRC” means monthly recurring charge.

“Off-Net Services” means any services and/or products provided by a third party, including Providers.

“On-Net Services” means the owned or leased facilities controlled by Granite, including the Core Network.

“Party” means Customer or Granite

“Parties” means together, Customer and Granite.

“Provider” means one of Granite’s underlying carriers, providers and/or vendors that provide Services which Granite provides to Customer.

“Provider Equipment” means telecommunications and data devices, apparatus and associated equipment owned, leased, or otherwise obtained by Granite and/or its Provider(s) to provide Services.

“Rates and Charges” means the rates, charges and/or fees for a Service, as modified from time to time as permitted under or required by the Agreement.

“SLA” means service level agreement as set forth at [www.granitenet.com](http://www.granitenet.com).

“Services” means any and all products and services offered by Granite, including, without limitation, local exchange telecommunications services, long distance service, broadband services, MPLS and/or private networking services, dedicated internet services and/or any other services and/or products that are provided by Granite to Customer.

“Service Order Document” means any quotes, service order forms and commercial account form(s) and letter(s) of agency/agreements relating to specific Services.

“Service Start Date” means the date that Granite notifies Customer that specific Services are available, unless Customer within five (5) days notifies Granite of any service affecting deficiency in the specific Services. If no notification is received or if Customer fails to perform testing, Customer shall be deemed to have accepted the Service(s). In the event Customer notifies Granite of a service-affecting deficiency, Granite shall investigate and correct such deficiency within a reasonable time period. Granite shall begin billing for monthly recurring charges on the later of (i) on the day Granite notifies Customer; or (ii) in the event of a valid, service-affecting deficiency, the day immediately following the date on which such deficiency was resolved.

“Service Term” means specific term of an individual circuit or service included as part of the Service.

**Attachment B**  
**Escalation Procedures**<sup>1</sup>

Despite Granite's best efforts to maintain the most reliable level of service possible in the industry, service-affecting issues periodically arise. In those rare instances where Customer's service may be affected, Customer's trouble ticket is initiated to identify the issue.<sup>2</sup> Each trouble ticket has an assigned tracking number used to reference the issue and review status.

The Granite account team will determine the source of the issue, and, if the issue involves an interconnecting service provider, will initiate a repair request immediately through Granite's electronic real-time repair interface with the provider. Granite's account team will engage in ongoing coordination with interconnecting providers until the issue is resolved, and will provide frequent updates, including via emails and/or telephonic contact with Customer directly or through the Premier Account Manager, at Customer's direction until the trouble is resolved. When the matter is resolved Granite representatives will also contact Customer to confirm resolution.

Granite responds to service-affecting issues within one (1) hour of discovery. Average service restoration times vary depending on the nature of the issue. Typical service issue resolution times are as set forth in the applicable Service Schedules, Additional Terms and Conditions of Service and/or SLAs:<sup>3</sup>

In the event that a more expedited resolution of service-affecting issues becomes critical, Granite will implement its established escalation procedures. Service-affecting issues may be escalated from the Premier Account Manager through to Granite's President in extreme cases, based on the following guidelines:

1st level	Premier Account Manager – all tickets except emergency tickets (outages)
2nd level	Premier Account Supervisor – all emergency tickets and all tickets outstanding over 4 hours
3rd level	Asst. VP/Director of Premier Accounts – all emergency tickets outstanding over 1 hour and non-emergency tickets outstanding over 12 hours
4th level	SVP of Premier Accounts – all emergency tickets outstanding over 4 hours
5th level	Chief Operating Officer – all emergency tickets outstanding over 6 hours

In instances where service issues are less critical, the Premier Account Manager will maintain ongoing service issue tracking and provide weekly, bi-weekly or monthly account status conference calls and/or reports, based on Customer's preferences. Issue reports include:

- Review status and complete documentation of all repair issues.
- Review status and complete documentation of uncompleted change orders.
- Review status and complete documentation of new location installs.

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<sup>1</sup> Repair times may vary for certain Services, see Additional Terms of Service as applicable.

<sup>2</sup> In addition to the account management team, Granite customer service representatives provide live support on the Help Desk, 866.847.5500, at Granite's Quincy, Massachusetts headquarters, 24 hours a day, 7 days a week.

<sup>3</sup> Updates are given to Customer daily until issue is resolved.



**Attachment C**  
**Internet Based Services – Additional Terms and Conditions of Service**

These Internet Based Services Additional Terms and Conditions of Service (these “Internet Terms of Service”) state important requirements regarding the use of Internet Based Services, provided by Granite and/or its affiliates through the Core Network and Granite’s contracts with its Provider(s), by Customer and any of its end users, invitees, licensees, customers, agents or contractors. These Internet Terms of Service state certain of Customer’s and Granite’s duties, obligations and rights. Customer should read them carefully as they contain important information. IF CUSTOMER DOES NOT AGREE TO THESE INTERNET TERMS OF SERVICE, CUSTOMER MAY NOT USE INTERNET BASED SERVICES AND CUSTOMER MUST TERMINATE USE OF SUCH INTERNET BASED SERVICES IMMEDIATELY. These Internet Terms of Service are in addition to the General Terms of Service.

The following additional terms and conditions are applicable to all Internet Based Services:

**1. Disclaimers.** Customer acknowledges and agrees that certain Internet Based Services, including, without limitation, VoIP Services, ordered through Granite may not operate in the same manner as traditional wireline phone service and that the following terms and conditions apply with respect to such Internet Based Services, including VoIP Services: (a) such Internet Based Services are designed only for use with a compatible PBX or similar advanced telephone system; (b) such Internet Based Services only support Granite’s local, intralata toll, interstate long distance and International voice services; (c) such Internet Based Services DO NOT support auto dialers, predictive dialers, telemarketing applications, modems, credit card process, heavy faxing or alarm lines and elevator lines (only POTS lines should be used for these purposes); (d) a qualified vendor must install the equipment and service at Customer’s sole expense and Granite will not process any order without a qualified vendor involved in the installation process; and (e) Granite requires that Customer provide a complete list of all phone numbers to be ported, any numbers omitted from the list may result in those numbers not being ported at the time of circuit turn-up. Granite will attempt to retrieve CSRs from the existing provider(s), but cannot guarantee its ability to obtain such CSRs. Customer agrees to provide Granite with complete CSRs, if requested.

**2. 911 Services.**

2.1 CUSTOMER ACKNOWLEDGES AND AGREES THAT SOME OF THE SERVICES PROVIDED BY GRANITE, INCLUDING VoIP SERVICES, ARE INTERNET BASED SERVICES AND THAT 911 SERVICES ON INTERNET BASED SERVICES ARE DIFFERENT THAN THAT OF TRADITIONAL WIRELINE SERVICE. FOR BASIC 911 OR E911 TO BE ACCURATELY ROUTED TO THE APPROPRIATE EMERGENCY RESPONDER, CUSTOMER MUST PROVIDE GRANITE WITH THE TELEPHONE NUMBER(S) ASSOCIATED WITH SUCH INTERNET BASED SERVICES FOR THE REGISTERED ADDRESS.

2.2 CUSTOMER ACKNOWLEDGES THAT INTERNET BASED SERVICES, INCLUDING, WITHOUT LIMITATION, VoIP SERVICES, MAY NOT SUPPORT BASIC 911 OR E911 DIALING IN THE SAME MANNER AS TRADITIONAL WIRELINE PHONE SERVICE. CUSTOMER AGREES TO INFORM THIRD PARTIES OF THE POTENTIAL COMPLICATIONS ARISING FROM BASIC 911 OR E911 DIALING. SPECIFICALLY, CUSTOMER ACKNOWLEDGES AND AGREES TO INFORM ALL EMPLOYEES, GUESTS, AND OTHER THIRD PERSONS WHO MAY USE SUCH INTERNET BASED SERVICES THAT BASIC 911 AND E911 SERVICES WILL NOT FUNCTION IN THE CASE OF A SERVICE FAILURE FOR ANY OF THE FOLLOWING REASONS: (I) POWER FAILURES; (II) SUSPENDED OR TERMINATED SERVICE; (III) SUSPENSION OF SERVICES DUE TO BILLING ISSUES; AND/OR (IV) ANY OTHER SERVICE OUTAGES NOT DESCRIBED HEREIN. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT FAILURE TO PROVIDE A CORRECT PHYSICAL ADDRESS IN THE REQUISITE FORMAT MAY CAUSE ALL BASIC 911 OR E911 CALLS TO BE ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER. FURTHERMORE, CUSTOMER RECOGNIZES THAT USE OF SUCH INTERNET BASED SERVICES FROM A LOCATION OTHER THAN THE LOCATION TO WHICH THE SERVICE WAS ORDERED, I.E., THE “REGISTERED ADDRESS,” MAY RESULT IN BASIC 911 OR E911 CALLS BEING ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER.

2.3 CUSTOMER IS REQUIRED TO REGISTER THE PHYSICAL LOCATION OF THEIR EQUIPMENT (I.E. IP PHONE, SOFTPHONE, DIGITAL TELEPHONE ADAPTER OR VIDEOPHONE, ETC.) WITH GRANITE AND AGREES TO UPDATE, AND PROVIDE PRIOR WRITTEN NOTICE TO GRANITE OF THE LOCATION OF SUCH EQUIPMENT WHENEVER THE PHYSICAL LOCATION OF SERVICE FOR A PARTICULAR TELEPHONE NUMBER CHANGES.

2.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER GRANITE, ITS PROVIDERS, NOR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY, OR ANSWERING OF EMERGENCY SERVICES OR IN RESPONDING TO EMERGENCY CALLS, NOR THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO THE PROVISION OF ALL TYPES OF EMERGENCY SERVICES TO CUSTOMER. CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT CUSTOMER IS INDEMNIFYING AND HOLDING HARMLESS GRANITE FROM ANY CLAIM OR ACTION FOR ANY CALLER PLACING SUCH A CALL WITHOUT REGARD TO WHETHER THE CALLER IS AN EMPLOYEE OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES TO HOLD HARMLESS AND INDEMNIFY GRANITE FROM ANY CLAIM OR ACTION, ARISING OUT OF OR RELATING TO, MISROUTES OF ANY 911 CALLS, OR WHETHER LOCAL EMERGENCY RESPONSE CENTERS OR NATIONAL EMERGENCY CALLING CENTERS ANSWER A 911 CALL OR HOW THE 911 CALLS ARE HANDLED BY ANY EMERGENCY OPERATOR INCLUDING OPERATORS OF THE NATIONAL CALL CENTER. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND/OR ANY OTHER THEORIES OF LIABILITY.



## VoIP SERVICES SERVICE LEVEL AGREEMENT

VoIP Services, including SIP Trunking, Hosted PBX, SIP primary rate interface services, Hosted Voice, Virtual Auto Attendant, Virtual Voicemail and other Voice over Internet Protocol (VoIP) services will be measured based on Service Level Agreement Objectives (“SLA Objectives”) as set forth in Section 1. SLA Objectives are based upon intended/target performance levels/criteria of Granite’s Core Network.

1. **SLA Objectives.** SLA Objectives are as follows:

### On-Net Services Performance

**General Standard.** Granite will use commercially reasonable efforts to maintain its overall VoIP Services quality. The quality of VoIP Services shall be consistent with industry standards and sound business practices.

**Specific Interruptions in VoIP Services.** If there are Interruptions in VoIP Services, which are not due to specific exclusions as set forth in Section 4, then Customer may be eligible to receive a service credit for the portion of the specific VoIP Services that the Interruption affects. A service credit will be made when an interruption occurs because of a failure of any On-Net Services or other components furnished by Granite.

“Interruption” means a Level 1 Event or a Level 2 Event.

“Level 1 Event” means a critical problem that relates to the fundamental functionality of the affected VoIP Services and precludes use of such specific VoIP Services resulting in an out of service condition for the affected VoIP Service (e.g. hosted seat, DID or call path) including, but not limited to, loss of dial tone, inability to connect calls (incoming or outgoing) or total network out of service conditions. Granite will respond to a Level 1 Event within four (4) hours of Customer initiating a trouble ticket with Granite.

“Level 2 Event” means a significant problem that relates to the functionality of the affected VoIP Services, but does not preclude productive use of the affected VoIP Services. Granite shall respond within eight (8) hours of Customer initial a trouble ticket with Granite.

There are no service credits available for On-Net Services performance other than a Level 1 Event or a Level 2 Event.

*SLA Objectives apply only to On-Net Services.* SLA Objectives are effective as of the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) month after the Activation Date of such specific VoIP Services.

### On-Net Services - Repair/Installation

VoIP Services	
CPE MTTR	2 business days
Install Interval	90 business days

**Off-Net Services.** Notwithstanding anything to the contrary contained herein or in any other document, including, but not limited to, the General Terms of Service or the VoIP Terms of Service, SLA Objectives and service credits, if any, shall not apply to all or any portion of Off-Net Services used to provide the VoIP Services. In the event of any failure of network availability of such Off-Net Services or failure to meet any other service level agreements of such Off-Net Service provided by Granite and/or its Provider(s) to Customer, Granite agrees to pass through a service credit equal to the service credit received by Granite from such Provider(s), if any. Customer’s sole and



## VoIP SERVICES SERVICE LEVEL AGREEMENT

exclusive remedy, and Granite's sole and exclusive liability and responsibility, for any failure of network availability of such Off-Net Services or failure to meet any other service level agreements of such Off-Net Services is as stated in the preceding sentence. *All Off-Net Services service level agreements will be measured on a Provider by Provider basis using each Provider's definitions and criteria for each of the factors involved in calculating such service level agreement, including but not limited to, trouble resolution, service outage time, excluded outage time and outage count.* Service credits, if any, for Off-Net Services shall not exceed the service credit amounts Granite receives from its Provider(s).

### Applicability.

In no event shall any failure to meet any SLA Objectives or Off-Net Services service level agreements constitute, or be deemed to constitute, a breach by Granite of the Agreement with a Customer.

## **2. Descriptions and Definitions.**

### CPE MTTR

Replacement equipment provided by Granite will be shipped for second (2<sup>nd</sup>) business day delivery for Customer self-installation so long as (a) the trouble is isolated to the Granite provided and managed equipment, and (b) the root cause of the failure is determined by Granite by 1pm EST.

### Install Interval

"Install Interval" is defined as the number of business days beginning on the date when Customer has provided Granite with (a) signed Service Order Documents for VoIP Services and such Service Order Documents are a "clean order" (meaning Customer has provided Granite with all information necessary to place the order), acceptable in all respects to Granite and (b) Granite and/or Provider(s) have accepted the service order, and ending on the Activation Date of the specific VoIP Services. Install Intervals apply to specific VoIP Services individually. Install Intervals exclude any service location where facilities are determined to be unavailable or impaired by the underlying local access provider.

### Chronic Outages

If any service location circuit experiences a "Chronic Outages" (meaning within any given calendar month, a specific affected VoIP Service experiences three (3) or more outages in violation with an SLA Objective), Customer may request an escalation of repair in accordance with Granite's escalation procedures and, upon receipt, Granite will have ten (10) business days to evaluate and prescribe resolution, including a timeline to complete the prescribed repairs. If Granite fails to perform the escalation or to resolve the Chronic Outage within the timeline prescribed, Customer may cancel that particular service location circuit without early termination fees. Service cancellations/terminations without early termination fees are not available with respect to incidents involving specific exclusions (as set forth in Section 4).

### Escalation Procedures

In the event that more expedited resolution of service-affecting issues becomes critical or Granite exceeds the MTTR, Granite will implement its established escalation procedures.

**3. Service Credits.** If Granite does not meet its SLA Objectives, Customer may receive a service credit for the VoIP Services impairment, proportional to Interruption affecting such specific VoIP Services.

Customer's sole and exclusive remedy, and Granite's sole and exclusive liability and responsibility, for any failure to meet any SLA Objectives is as stated in this Section 3 and is limited to the applicable service credits, if any.

The measurement period for a service credit begins when Customer reports VoIP Services interruption through the opening of a trouble ticket and makes such specific affected VoIP Services available for testing and repair. The



## VoIP SERVICES SERVICE LEVEL AGREEMENT

measurement period for a service credit ends when Interruption is resolved.

### Determination of Service Credits

In the event that the Level 1 Event continues longer than eight (8) hours and up to 24 hours, Granite shall issue a credit equal to 1/30th of the monthly recurring charges for such specific affected VoIP Services and an additional credit of 1/30th (or pro rata portion thereof based on one (1) hour increments) of the monthly recurring charge for such specific affected VoIP Services for each additional 24 hours (or portion thereof) out of service period.

In the event that the Level 2 Event continues longer than eight (8) hours and up to 24 hours, Granite shall issue a credit equal to 1/60<sup>th</sup> of the monthly recurring charges for such specific affected VoIP Services and an additional credit of 1/60<sup>th</sup> (or pro rata portion thereof based on one (1) hour increments) of the monthly recurring charge for such specific affected VoIP Services for each additional 24 hours (or portion thereof) out of service period.

The maximum service credit, if applicable, available in any given month for Repair/Installation SLA Objectives are as follows:

<u>SLA Objective</u>	<u>Maximum Service Credit</u>
CPE MTTR	10% of MRC
Install Interval	10% of MRC

Service credits hereunder are calculated as a percentage of the then current MRC with respect to the specific VoIP Services for which the service credit is requested, and may not be applied to usage charges, government fees, taxes, surcharges or any third party charges passed through to Customer by Granite. Customer may not receive more than one (1) service credit per month for any Interruption involving a specific VoIP Services' element. Multiple instances of non-conformance affecting the same specific VoIP Services during a particular month will not be eligible for multiple service credits, however, if approved they will be applied toward the accumulated monthly statistics. Service credits will not be available for any VoIP Services terminated by Customer for cause pursuant to the terms of the Agreement. Service credits may not be carried over into subsequent months and apply only to the month in which they are issued, regardless of balance owed.

If an incident affects the performance of VoIP Services and results in a period or periods of interruption, disruption, failure or degradation in VoIP Services, entitling Customer to one (1) or more credits under multiple SLA Objectives, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to service credits under multiple SLA Objectives for the same incident.

For purposes of calculating service credits, each month is considered to have 30 days.

### Eligibility for Service Credits

To be eligible for a service credit, Customer must: (a) open a valid trouble ticket documenting the problem and the SLA Objective's non-conformance; and (b) timely request the applicable service credit by (i) emailing [dataservicesrepair@granitenet.com](mailto:dataservicesrepair@granitenet.com) with "VoIP - Service Credit Request" in the subject header or (ii) contacting Customer's Granite premier representative, within thirty (30) days after the trouble ticket is closed by Granite. Each service credit request must reference the applicable trouble ticket number(s) and circuit identifier(s) for the circuit elements associated with the non-conforming event. Service credit requests will not be accepted for open trouble tickets.

Granite, without notice and at its sole and absolute discretion, may limit or eliminate Customer's eligibility to



## VoIP SERVICES SERVICE LEVEL AGREEMENT

receive service credits if (a) Customer account is not current and in good standing; (b) Customer was in default of any payment or other terms at the time of the incident generating the service credit claim or prior to Granite issuing the service credit; (c) Customer has submitted an excessive number of rejected service credit claims or attempted to use the service credit process in a frivolous or fraudulent manner; and/or (d) Customer is in violation of Granite's Acceptable Use Policy or Moderation of Use Policy covering the affected VoIP Services.

Service credits will be determined based upon if the actual monthly average of such parameter exceeds the SLA Objective, except for Network Availability which will be calculated on a cumulative basis in a given month. Service credit requests will be reviewed and evaluated by Granite in relation to the relevant accumulated statistics in the month during which an SLA Objective's non-conforming event is alleged to have occurred. Granite's determination as to whether a SLA Objective has or has not been met shall be final. Service credit requests encompassing multiple months will be prorated in accordance with the statistical accumulations for the month in which the non-conformance occurred. Granite shall have thirty (30) business days to respond from the end of the month in which the service credit request is submitted. Service credit requests approved by Granite will be credited to Customer's account on the next billing cycle that begins after the service credit approval.

Cumulative service credits in any one (1) month must exceed \$25.00 to be processed. In no event shall Granite's total liability for any and all interruptions, disruptions, failures, and/or degradations in VoIP Services (including, without limitation, any failure to meet any SLA Objective set forth in this Service Level Agreement) exceed one hundred percent (100%) of the MRC for the affected VoIP Services.

**4. Specific Exclusions.** SLA Objectives do not include periods of service outages or other service level deficits, in whole or in part, due to any of the following causes and/or exclusions:

- Customer fails to report the issue or request a trouble ticket.
- Service interruptions or delays arising out of or in connection with, but not limited to, the following:
  - (a) any act or omission on the part of Customer or a third party;
  - (b) interruption occurring because Customer elects not to release the Service for testing and repair by Granite but continues to use it on an impaired basis;
  - (c) failing to provide access to Customer premises as reasonably requested by Granite or its agents to enable Granite to comply with its obligation, including having a Customer representative present to assist in performing diagnostic testing and to resolve problems should they exist;
  - (d) the failure of a service or equipment that is not part of VoIP Services;
  - (e) any inside wiring; and/or
  - (f) CPE, router or firewall configuration changes made by Customer or made in response to security threats, breaches or attacks.
- Granite or Customer's scheduled outages, network maintenance or emergency maintenance.
- Any force majeure event beyond the reasonable control of Granite including, but not limited to cable cuts.
- Any failure, issue or delay associated, in whole or in part, with Off-Net Services, including but not limited to, local access and cross-connects.
- Any failure, issue or delay associated, in whole or in part, with Customer's or third party's software, equipment, applications, facilities and/or internal network.
- Any event or occurrence that results in "no trouble found" by Granite.
- VoIP Services that have not been accepted by Customer or issues that occur within the first thirty (30) days of the Activation Date of the specific VoIP Services.
- VoIP Services that do not directly interface a port on Granite's or its Provider's network via physical or logical connection.
- During emergency network conditions where dynamic rerouting is required.
- Only apply to circuits originating and terminating in the contiguous United States.

**5. Miscellaneous.** Granite, in its sole discretion, may change, modify, revise, amend and/or restate this SLA and/or any SLA Objective from time to time without notice. Such changes or revisions shall be deemed



## **VoIP SERVICES SERVICE LEVEL AGREEMENT**

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effective upon posting of an updated VoIP Services (On-Net Services) SLA to the Granite website at [www.granitenet.com](http://www.granitenet.com). Capitalized terms not defined herein shall have the meaning set forth in the General Terms of Service or the applicable Additional Terms of Service.

Dated and effective as of May 6, 2016.

**VOIP SERVICES**  
**ADDITIONAL TERMS AND CONDITIONS OF SERVICE**

These VoIP Services Additional Terms and Conditions of Service (these “VoIP Services Terms of Service”) state important requirements regarding the use by Customer and any of its end users, invitees, licensees, customers, agents or contractors of VoIP Services offered by Granite and/or its affiliates through contracts with its Provider(s). These VoIP Services Terms of Service state certain of Customer’s and Granite’s duties, obligations and rights. Customer should read them carefully as they contain important information. IF CUSTOMER DOES NOT AGREE TO THESE VOIP SERVICES TERMS OF SERVICE, CUSTOMER MAY NOT USE VOIP SERVICES AND CUSTOMER MUST TERMINATE USE OF SUCH VOIP SERVICES IMMEDIATELY. These VoIP Services Terms of Service are in addition to the General Terms of Service.

The following additional terms and conditions are applicable to all VoIP Services:

**1. Services.**

1.1 Description of Services. “VoIP Services” shall mean, and consist of, one (1) or more of the following Services: (a) “SIP Trunking” (session initiation protocol trunking); (b) “Hosted PBX” (i.e. hosted private branch exchange services); (c) SIP primary rate interface services (“SIP PRI”); (d) “Hosted Voice” (i.e. Internet-based dial tone services for 2-way voice communication with limited feature sets); (e) Virtual Auto Attendant (i.e. answering and routing of calls); (f) Virtual Voicemail; and (g) other Voice over Internet Protocol (VoIP) services, which may include basic voice, including local and long distance services and features.

1.2 Granite Equipment and Core Network; Customer Equipment.

(a) Provider Equipment and the Core Network shall remain the sole and exclusive property of Granite and/or its Provider(s), as applicable, and nothing contained herein, in any Service Order Documents or in any other document or writing accepted by Granite grants or conveys to Customer any right, title or interest in any Provider Equipment or the Core Network, nor shall anything herein constitute, create or vest in Customer any easement or any other property right. Notwithstanding that it may be or become attached or affixed to real property, the Core Network and Provider Equipment will at all times remain the property of Granite and/or its Providers, as applicable. Customer may not, nor permit others to, alter, adjust, encumber, tamper, repair or attempt to repair, rearrange, change, remove, relocate, or damage any Provider Equipment or the Core Network without the prior written consent of Granite. Customer may not cause any liens to be placed on any Provider Equipment or the Core Network, and will cause any such liens to be removed within ten (10) days of Customer’s knowledge thereof. Customer shall be liable to Granite for any loss or damage to Provider Equipment or the Core Network caused by Customer or any of its end users, invitees, licensees, customers, agents or contractors. Nothing herein shall prevent Granite from using the Core Network and Provider Equipment to provide Services to other customers.

(b) To the extent a Service Order Document requires Granite to complete construction, extend the Core Network and/or obtain additional Underlying Rights (as defined below in this Section 1.2(b)), Customer shall use commercially reasonable efforts to assist Granite in obtaining such Underlying Rights as necessary to provide VoIP Services. In the event that Granite is unable to obtain or maintain any necessary Underlying Rights without incurring additional costs, unless Customer bears the costs of obtaining such Underlying Rights, Granite may cancel the applicable service order and shall incur no liability to Customer hereunder. Granite shall not be deemed to be in breach of the Agreement for its failure to meet any anticipated service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure event; (ii) failure to obtain, or delay in obtaining, any required Underlying Rights; (iii) construction delays; or (iv) any other circumstances beyond the control of Granite. “Underlying Rights” means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, access rights, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Core Network and/or for Granite to provide VoIP Services. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Services that are necessary for Granite to provide VoIP Services.

(c) VoIP Services utilize CPE purchased at Customer’s own expense (unless otherwise provided in the Service Order Documents) and/or either provided by Granite or otherwise approved by Granite



and/or its Provider(s). With respect to CPE provided by Granite, Customer shall (a) use such CPE for VoIP Services provided by Granite and Customer is not authorized to use CPE for any other purpose; (b) comply with all documentation and manufacturer's instructions; and (c) take reasonable measures to protect and care for CPE. Customer is responsible for all loss, damage or destruction to CPE. Promptly upon notice from Granite, Customer shall eliminate any hazard, interference or Service obstruction that any such CPE is causing or may cause as reasonably determined by Granite. Granite may, at its sole and absolute discretion, suspend Service if any CPE does not comply with the provisions herein.

### 1.3 Access.

(a) Upon expiration or termination of the applicable Service Term, Customer shall grant Granite access to its premises as necessary to enable Granite to remove the Provider Equipment and any elements of the Core Network. Granite, its employees, contractors and/or agents shall have access to any Provider Equipment, elements of the Core Network or facilities at a Customer premises.

(b) Neither Customer nor any of its end users, invitees, licensees, customers, agents or contractors shall have any recourse against any property owner or property manager of any premises to which any VoIP Services are delivered and/or at which the Core Network or Provider Equipment is located, as a result of or in reliance upon the Agreement. Without limiting the foregoing, this provision shall not be construed to impose any liability on Granite and/or its underlying Provider(s), nor shall Granite have any liability for, or on behalf of, such property owner or property manager.

1.4 Provisioning. Customer must provide Granite with (i) a network assessment worksheet (in a form provided by or acceptable to Granite) for purposes of determining the current status and support characteristics of key network protocols, services and settings (including, but not limited to, a site survey document and Customer's local area network(s) minimum network requirements and firewall specifications) necessary for providing VoIP Services to Customer; and (ii) detail inventory of telephone numbers to be ported to Granite, and (iii) for each telephone number being ported (A) account name, (B) account address, and (C) account number. Customer acknowledges that the provisioning of VoIP Services depends on the accuracy and timely receipt of information on the network assessment worksheet, other documents and/or responses to questionnaires and additional questions from Granite. Granite is not responsible for any delays in provisioning or failures of VoIP Services related to inaccurate information provided by Customer or changes in Customer's network that are not communicated to Granite. Granite and/or its Providers will evaluate, design and provision VoIP Services based on a configuration proposed to, and accepted by, Customer. Customer acknowledges that there is no guaranty that Customer's current CPE or previously purchased or installed equipment can be used with VoIP Services.

1.5 Customer Provided Bandwidth. If Customer chooses to order VoIP Services utilizing its own separate Internet connection, whether or not ordered from Granite or a third party provider (i.e. "customer provided bandwidth, "CPB" or "over the top") and not order such VoIP Services over Granite MPLS Services, then the following conditions apply: (a) such VoIP Services shall be considered a "best efforts" VoIP Services, which means that Granite will not provide any service level agreements, warranties or guaranties, including, without limitation, for the voice quality; (b) Customer is responsible for (i) procurement, sizing, installation, configuration and operation of the CPB, (ii) maintenance, repair and replacement of CPB, and (iii) installation and activation CPE for the VoIP Services, in each case unless Customer separately contracts with Granite to provide such services, and (c) Customer network at such locations meets Granite's requirements for such VoIP Services.

### 1.6 Hosted PBX Services.

(a) Unless otherwise provided in Service Order Documents executed by Granite, Hosted PBX Services include the following: (i) monthly recurring seat charges, (ii) features (based upon the package selected by Customer on the Service Order Documents and specifically excluding those features set forth in Section 1.6(b)), (iii) local usage; and (iv) a long distance usage package per seat per month. Depending on the specific long distance usage package, Customer may pool the allotted long distance usage over the number of seats at the same location. Customer will be charged at Granite's then current MOU overage rate for long distance usage in excess of the amount set forth above.

(b) Unless otherwise provided in Service Order Documents executed by Granite, all other services and features will not be included in the Hosted PBX Services and will be provided at an additional charge, including, but not limited to: (i) directory listings, (ii) non-published, (iii) international calling and offshore calls to U.S. territories, (iv) directory assistance calls, (v) toll free services, (vi) call completion and any other pay-per-use features, (vii) all repair services, and (viii) non-recurring charges, including, but not limited to, service order charges, installation fees, no trouble found fees, and tag and locate fees.

1.7 SIP Trunking Services; Bursting. If selected by Customer as part of the SIP Trunking Services, Customer may order and purchase the ability to burst or go over the number of purchased SIP trunks when Customer's call volume so requires. For Customers selecting the bursting option, Granite will calculate for each calendar month the highest daily number of concurrent SIP trunks used in excess of the SIP trunks purchased by Customer. Granite shall bill, and Customer shall pay, an additional MRC for each such additional SIP trunk at Granite's then current rate for such bursting.

1.8 Maintenance.

(a) Granite will endeavor to conduct (or cause to be conducted) scheduled maintenance of On-Net Services that is reasonably expected to interrupt VoIP Services between 12:00 midnight and 6:00 a.m. local time or, upon Customer's reasonable request, at a time mutually agreed to by Customer and Granite. Granite will use commercially reasonable efforts to notify Customer of scheduled maintenance that is reasonably expected to interrupt Service, via telephone or e-mail, no less than two (2) days prior to commencement of such maintenance activities. Customer shall provide a list of Customer contacts for maintenance and escalation purposes, which may be included on the Service Order Documents, and Customer shall provide updated lists to Granite, as necessary. With respect to Off-Net Services, Granite's may interrupt VoIP Services for scheduled maintenance and other operational reasons, and Granite will use commercially reasonable efforts to provide notice when possible (provided, Granite shall not be liable for any failure to provide such notice or for its Providers failing to provide such notice). Except as otherwise provided in the Agreement, Customer shall not be entitled to receive any remuneration for such schedule interruptions.

(b) Granite and/or its Providers may perform emergency maintenance of On-Net Services or Off-Net Services in their respective sole and absolute discretion, with or without prior notice to Customer, to preserve the overall integrity of the Core Network or such Provider's network. Granite will use commercially reasonable efforts to notify Customer, as soon as reasonably practicable, of any such emergency maintenance activity that materially and adversely impacts any VoIP Services.

1.9 Call Duration, Fraudulent Calls, Etc.

(a) All user traffic must be "IP Originated" which means voice traffic which Customer represents and certifies as utilizing TCP/IP as a transmission protocol from the Customer's originating equipment (i.e. SIP phones, SIP PBX, TDM to SIP Gateway, IP adapter, etc.) to a TCP/IP gateway. Traffic identified as non-IP Originated is subject to incremental surcharge per minute on all calls.

(b) Each call's jurisdiction shall be determined by the geographic original point attributed to the outpulsed, valid Automatic Number Identification (ANI) and Customer's called number. Customer is required to utilize and outpulse ANIs that are registered with the North American Numbering Plan Administration (NANPA) and which have been provided to Granite prior to outpulse. Unless otherwise approved by Granite in its sole and absolute discretion, Customer may not outpulse anonymous phone numbers, defined as those numbers that do not conform to a Customer-provided ANI (i.e. 8XX) or otherwise have an indeterminate jurisdiction. Anonymous numbers may be blocked, failed or billed at intrastate rates based on the rates applicable to Customer's physical location where the call originates.

(c) Customer shall indemnify and hold Granite harmless for any and all costs, expenses, claims, or actions (including reasonable legal expenses) in all proceedings arising from fraudulent usage, of any nature, of the VoIP Service(s), including, but not limited to costs arising from international usage or long duration calls. Customer shall not be excused from paying Granite for VoIP Service(s) provided to Customer or any portion thereof on the basis that fraudulent usage comprised a portion of the charges or on the basis that Granite did not block Customer's international calling ability. In the event Granite discovers fraudulent usage, nothing contained

herein shall prohibit Granite from taking immediate action that Granite deems to be reasonably necessary to prevent such fraudulent usage from taking place including, without limitation, blocking, re-blocking, or terminating VoIP Service(s) to or from specific locations, provided that Granite shall not be required under any circumstances to take such action. The parties agree that Customer shall be responsible for any fraud, unauthorized use, and is required to provide total payment of charges associated with such fraud and unauthorized.

(d) Granite's fair use policy ("Fair Use Policy") is to prevent abuse, fraud or unreasonable exploitation of Granite's unlimited usage service plans, as applicable, and unreasonable overutilization of Granite's facilities. Granite's unlimited calling plans are intended solely for normal commercial use. Granite's unlimited calling plans are designed only for continuous live dialog between two individuals. Unusual calling patterns, excessive called numbers and/or consistent excessive usage will each be considered an indicator that usage is exceeding normal standards. Granite's unlimited calling plans may not be used for auto-dialing, continuous, or extensive call forwarding, excessive conferencing, inbound/outbound centralized or distributed call center activity, inbound/outbound customer service, telemarketing (including charitable or political solicitation or polling), fax or voicemail blasting, or for continuous or extensive chat line access, or as an open telephone line as a monitor, intercom or transcription service. Granite has other plans applicable for such applications and businesses. Granite reserves the right to monitor call traffic patterns and determine, in its sole discretion, what is normal usage. For unlimited calling plans, Granite may apply a surcharge per minute of use to the number of minutes by which Customer's usage exceeds this normal usage.

(e) Customer shall not pass 900, 500, 700, or invalid numbers.

(f) Customer is aware and acknowledges that Granite has no control over the international routes of its Providers. Therefore, Granite cannot assure or guarantee calls/voice quality for all international traffic. Customer agrees that all calls completed will be considered valid and billable, regardless of call quality.

(g) If Customer wishes to block international calls, Customer must ensure that such request is in writing, in the body of the Service Order for the VoIP Services for which international blocking is to be applied. Any such blocking request that is not in writing will not be valid. For the purpose of call blocking, "international" refers only to those calls using a 011 prefix. Thus, for example, phone calls from the United States to Canada are not International calls and cannot be blocked. It is Customer's responsibility to understand the limits on any call blocking functionality. Granite, in its sole discretion, may block calls to certain countries based on the risk of fraud, provided, Customer may request Granite to unblock such countries and in such event shall be responsible for all calls to such countries.

(h) A call is considered completed when it is answered by either a live person, or by voicemail systems, answering machines, private branch exchanges, or interexchange switching equipment. Granite begins billing at call pickup. In the event more than forty percent (40%) of total call attempts (inbound, outbound or toll free) in a billing period are abandoned or incomplete for any reason, Granite reserves the right to disconnect the seat/circuit and/or to charge, and Customer shall pay, an additional surcharge per abandoned call during such billing period.

(i) If in any given month more than ten percent (10%) of Customers calls are six (6) seconds or less in duration ("Short Duration Calls"), then Granite will assess a surcharge for such Short Duration Calls per call.

(j) During the Service Term, Granite will monitor Customer monthly call distribution and identify excessive traffic originating from or terminating to a high cost area ("HCA") defined as high-cost LATA's/OCN's and certain non-Regional Bell Operating Company areas. If the total amount of HCA minutes exceeds 30% in a given month, then a surcharge will be applied to all minutes in excess of 30% in the following invoice.

(k) Granite reserves the right to monitor Customer's calling patterns. Should Granite determine Customer has exhibited calling patterns that are uncustomary or exceed normal outbound to inbound ratios, Granite reserves the right to assess either a one time or rate per minute surcharge on all inbound calls.

(l) International calls terminating to a wireless device, such as a cellular phone, pager, personal computer, or personal digital assistant may have a separate higher rate applied. Customer shall be responsible for payment of any additional charges as a result of the applied rate, which will appear as an international mobile termination charge on Customer's bill.

1.10 Music On Hold Service. Customer may also be purchasing Granite's music hosting services (the "Music Hosting Services"), which may be purchased separately. Customer grants to Granite and its Providers a non-exclusive, worldwide, and royalty-free license for the term of these Music Hosting Services to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Customer's content as necessary for the purposes of rendering and operating the Music Hosting Services. If Customer provides Granite with material that Customer wishes Granite to host (e.g., custom music for Customer's music on hold) ("Custom Materials"), Customer represents and warrants that Customer has obtained and will maintain all necessary and appropriate rights, approvals and/or licenses for use of the Custom Materials. Customer agrees to indemnify and hold Granite, its officers, directors, employees, affiliates, Providers, other suppliers and shareholders harmless for all third party claims arising out of use of the Custom Materials. Customer expressly: (a) grants to Granite and its Providers and other suppliers a license to cache materials distributed or made available for distribution via the Music Hosting Services, including content supplied by third parties and (b) agrees that this caching is not an infringement of any of Customer's intellectual property rights or any third party's intellectual property rights. Customer shall indemnify and hold harmless Granite (including its reasonable attorneys' fees and expenses) in connection with any claim or violation of any intellectual property rights in related to materials distributed or made available for distribution via the Music Hosting Services.

1.11 VoIP Assurance Plan. If selected by Customer, the "VoIP Assurance Plan" may include, for a monthly recurring charge based on the package ordered by Customer: (a) maintenance for equipment, service and repairs; (b) 24/7/365 remote alarm monitoring; (c) on-site and/or remote support; (d) second-day parts replacement; and (e) first response priority. Other charges may apply. Customer may cancel the VoIP Assurance Plan within ten (10) days of the Service Start Date without charge. Following ten (10) days after the Service Start Date, the minimum service term for the VoIP Assurance Plan is thirty (30) days. Should Customer fail to provide reasonable access to Granite to diagnose and/or repair service issues, Granite will be excused from performance and Customer may be subject to a no-access charge.

1.12 VoIP SMS Enablement. If selected by Customer, VoIP SMS Enablement (the "SMS") may be enabled subject to a non-recurring charge for activation, usage charges will be assessed in arrears on a per SMS basis. Customer must comply with CTIA Messaging Principles and Best Practices, as may be updated from time to time, failure to comply shall constitute a violation of Granite's AUP. SMS is subject to character limitations as promulgated by CTIA, this may cause content to be segmented resulting in the sending and delivery of more than one (1) SMS. Customer understands and acknowledges that application-to-person SMS is prohibited.

1.13 Alarm Systems and VoIP Services. To the extent that Granite provides VoIP Services which Customer utilizes for transmission of alarm system signals, Customer acknowledges that Granite is not responsible for the functionality of such alarm systems and signals. Customer understands that VoIP Services and other Services are not infallible. Customer specifically acknowledges that Granite does not represent or warrant that the transmission of alarm signals will not be interrupted, circumvented or compromised. If VoIP Services are not operative, no alarm signals can be received by the monitoring station. Customer understands that VoIP Services may be impaired or interrupted by atmospheric conditions, including electrical storms, power failures or other conditions and events beyond Granite's control. The use of VoIP Services or other internet-based telephone service may prevent from the transmission of alarm signals at any time, and/or interfere with the telephone line-seizure features of Customer's alarm system. In the event Customer elects to use VoIP Services for alarm lines; CUSTOMER IS RESPONSIBLE FOR HAVING THESE SERVICES TESTED BY AN AUTHORIZED ALARM INSPECTION COMPANY TO ENSURE SIGNAL TRANSMISSION FEATURES ARE OPERATIONAL. THESE FEATURES INCLUDE BUT ARE NOT LIMITED TO PROPER FUNCTIONING OF LINE SEIZURE AND THE SUCCESSFUL TRANSMISSION OF SIGNALS TO THE MONITORING STATION. Customer accepts full responsibility for alarm system compliance with the authority having jurisdiction.

**2. Rates and Charges.** Rates and Charges for VoIP Services are as set forth in the applicable Service Order Document(s) or as otherwise communicated to Customer at the time of ordering such VoIP Services and may vary

depending on VoIP Service type, features, equipment and other costs required to deliver the VoIP Service to Customer.

**3. Service Term.** The initial minimum Service Term of all VoIP Services shall begin on the Service Start Date and shall be as set forth in the applicable Service Order Documents or other writing accepted by Granite, provided, notwithstanding the foregoing all VoIP Services shall commit to, and shall be deemed to have committed to, an initial minimum Service Term of at least twelve (12) months from the Service Start Date. Service Terms may be extended for additional monthly increments due to specific offerings or promotional terms. After the end of the initial minimum Service Term selected by Customer, and any renewal Service Terms selected by Customer, the Service Term shall automatically renew and continue on a month to month basis unless Customer provides prior written notice to Granite at least thirty (30) days prior to the end of the then current Service Term or the service is otherwise terminated in accordance with the Agreement.

**4. Early Termination Fees.** If any specific VoIP Services or the Agreement is disconnected or terminated after the Service Start Date but prior to the end of the initial minimum Service Term or any renewal Service Term selected by Customer, Customer shall be charged an Early Termination Fee in an amount equal to: (a) 100% of the last three (3) months average billings multiplied by the number of months (or portions thereof) remaining under the then current Service Term of the specific VoIP Services (including the remaining portion of any amortized CPE), plus, (b) any and all outstanding funds due to Granite at the time of termination, including, but not limited to, rendered service, hardware and installation fees, plus (c) actual expenses incurred by Granite to activate or terminate VoIP Services, plus (d) any installation, construction, CPE or other non-recurring charges waived or discounted by Granite and any and all credits, allowances, discounts and/or other incentives provided by Granite to Customer.

Dated and effective as of January 1, 2020



## ACCESS SERVICES (OFF-NET SERVICES) SERVICE LEVEL AGREEMENT

Access Services (Off-Net Services) will be measured based on Service Level Agreement Objectives (“SLA Objectives”) set forth in Section 1. SLA Objectives are based upon intended/target performance levels/criteria of Provider(s).

**1. SLA Objectives.** SLA Objectives are as follows:

Table 1

	<b>DIA DS1/DS3</b>	<b>Ethernet over Fiber (EOF)</b>	<b>Ethernet over Copper (EOC)</b>	<b>MPLS</b>	<b>Asym EoC</b>
Network Availability	99.90%	99.90%	99.50%	99.90%	99.50%
MTTR	8 hours	8 hours	8 hours	8 hours	8 hours
CPE MTTR	2 business days	2 business days	2 business days	2 business days	2 business days
Install Interval	45 business days	120 business days	90 business days	120 business days	90 business days

SLA Objectives are effective as of the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) month after the Activation Date of each specific Access Services circuit. *All SLA Objectives will be measured on a carrier by carrier basis using each Provider’s definitions and criteria for each of the factors involved in calculating such service level agreements including, but not limited to, trouble resolution, service outage time, excluded outage time and outage count.* SLA Objectives apply only to the Access Services segment between the points where traffic enters Provider’s core switching equipment and the point where it leaves Provider’s core switching equipment.

In no event shall any failure to meet any SLA Objectives constitute, or be deemed to constitute, a breach by Granite of the Agreement with Customer.

*SLA Objectives do not apply to VoIP Services, see separate VoIP Services Service Level Agreement.*

**2. Descriptions and Definitions.**

Network Availability

“Network Availability” will be an average of actual minutes of availability of all Customer IP logical connections as a percentage of the total IP logical connection available minutes as measured over a calendar month and shall be calculated as follows:

$$\text{Network Availability} = ((\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes} - \text{Outage Time Minutes}) / (\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes})) \times 100$$

The measurement period for Network Availability commences upon receipt of Customer’s report of a service outage and creation of a trouble ticket by Granite.

Mean Time to Repair

“MTTR” = (Service Outage Time Hours - Excluded Outage Time Hours)/Outage Count, provided that Service Outage Time, Excluded Outage Time and Outage Count are measured over a single calendar month.

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## ACCESS SERVICES (OFF-NET SERVICES) SERVICE LEVEL AGREEMENT

### CPE MTTR

Replacement equipment provided by Granite will be shipped for second (2<sup>nd</sup>) business day delivery for Customer self-installation so long as (a) the trouble is isolated to the Granite provided and managed equipment and (b) the root cause of the failure is determined by Granite by 1pm EST.

### Install Interval

“Install Interval” is defined as the number of business days beginning on the date when Customer has provided Granite with (a) signed Service Order Documents for Access Services and such Service Order Documents are a “clean order” (meaning Customer has provided Granite with all information necessary to place the order), acceptable in all respects to Granite and (b) Granite and/or Provider(s) have accepted the service order, and ending on the Activation Date of such specific circuit. Install Intervals apply to each specific circuit individually. Install Intervals exclude any service location where facilities are determined to be unavailable or impaired by the underlying local access provider or where construction or permitting is required.

### Chronic Outages

If any service location circuit experiences a “Chronic Outage” (meaning within any given calendar month, a specific affected Access Services experiences three (3) or more outages in violation with an SLA Objective), Customer may request an escalation of repair in accordance with Granite’s escalation procedures and, upon receipt, Granite will have ten (10) business days to evaluate and prescribe resolution, including a timeline to complete the prescribed repairs. If Granite fails to perform the escalation or to resolve the Chronic Outage within the timeline prescribed, Customer may cancel that particular service location circuit without early termination fees. Service cancellations/terminations without early termination fees are not available with respect to incidents involving specific exclusions (as set forth in Section 4).

### Escalation Procedures

In the event that more expedited resolution of service-affecting issues becomes critical or Granite exceeds the MTTR, Granite will implement its established escalation procedures.

**3. Service Credits.** If Granite does not meet its SLA Objectives, Customer may receive a service credit for the Access Services impairment, proportional to SLA Objectives’ non-conformance, up to the percentage identified in Table 2.

Table 2 – Service Credit Percentages

The maximum service credit available in any given month is as follows:

<u>SLA Objective</u>	<u>Maximum Service Credit</u>
Network Availability	15% of MRC
MTTR	5% of MRC
CPE MTTR	10% of MRC
Install Interval	10% of MRC

Customer’s sole and exclusive remedy, and Granite’s sole and exclusive liability and responsibility, for any failure to meet any SLA Objectives is as stated in this Section 3 and is limited to the applicable service credits, if any.

### Determination of Service Credits

Service credits hereunder are calculated as a percentage of the then current MRC with respect to the specific Access {999997-008/00009168-3}



## ACCESS SERVICES (OFF-NET SERVICES) SERVICE LEVEL AGREEMENT

Services for which the service credit is requested, and may not be applied to usage charges, government fees, taxes, surcharges or any third party charges passed through to Customer by Granite. Customer may not receive more than one (1) service credit per month for any SLA Objective's non-conformance involving a specific Access Services. Multiple instances of non-conformance affecting one (1) service location circuit during a particular month will not be eligible for multiple service credits, however, if approved they will be applied toward the accumulated monthly statistics. Service credits will not be available for any Access Services terminated by Customer for cause pursuant to the terms of the Agreement. Service credits may not be carried over into subsequent months and apply only to the month in which they are issued, regardless of balance owed.

If an incident affects the performance of Access Services and results in a period or periods of interruption, disruption, failure or degradation in Access Services, entitling Customer to one (1) or more service credits under multiple SLA Objectives, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to service credits under multiple SLA Objectives for the same incident.

### Eligibility for Service Credits

To be eligible for a service credit, Customer must: (a) open a valid trouble ticket documenting the problem and the SLA Objective's non-conformance; and (b) timely request the applicable service credit by (i) emailing [dataservicesrepair@granitenet.com](mailto:dataservicesrepair@granitenet.com) with "Access - Service Credit Request" in the subject header or (ii) contacting Customer's Granite premier representative, within thirty (30) days after the trouble ticket is closed by Granite. Each service credit request must reference the applicable trouble ticket number(s) and circuit identifier(s) for the circuit elements associated with the non-conforming event. Service credit requests will not be accepted for open trouble tickets.

Granite, without notice and at its sole and absolute discretion, may limit or eliminate Customer's eligibility to receive service credits if (a) Customer account is not current and in good standing; (b) Customer was in default of any payment or other terms at the time of the incident generating the service credit claim or prior to Granite issuing the service credit; (c) Customer has submitted an excessive number of rejected service credit claims or attempted to use the service credit process in a frivolous or fraudulent manner; and/or (d) Customer is in violation of Granite's Acceptable Use Policy or Moderation of Use Policy covering the affected Access Services.

Service credits will be determined based upon if the actual monthly average of such parameter exceeds the SLA Objective, except for Network Availability which will be calculated on a cumulative basis in a given month. Service credit requests will be reviewed and evaluated by Granite in relation to the relevant accumulated statistics in the month during which an SLA Objective's non-conforming event is alleged to have occurred. Granite's determination as to whether a SLA Objective has or has not been met shall be final. Service credit requests encompassing multiple months will be prorated in accordance with the statistical accumulations for the month in which the non-conformance occurred. Granite shall have thirty (30) business days to respond from the end of the month in which the service credit request is submitted. Service credit requests approved by Granite will be credited to Customer's account on the next billing cycle that begins after the service credit approval.

Cumulative service credits in any one (1) month must exceed \$25.00 to be processed. In no event shall Granite's total liability for any and all interruptions, disruptions, failures, and/or degradations in Access Services (including, without limitation, any failure to meet any SLA Objective set forth in this Service Level Agreement), exceed the lesser of (a) the service credit amounts Granite's receives from its Provider(s), if any, or (b) one hundred percent (100%) of the MRC for the affected Access Services.

**4. Specific Exclusions.** SLA Objectives do not include periods of service outages or other service level deficits, in whole or in part, due to any of the following causes and/or exclusions:

- Customer fails to report the issue or request a trouble ticket.
- Service interruptions or delays arising out of or in connection with, but not limited to, the following:

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## ACCESS SERVICES (OFF-NET SERVICES) SERVICE LEVEL AGREEMENT

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- (a) any act or omission on the part of Customer or a third party; (b) interruption occurring because Customer elects not to release the Service for testing and repair by Granite but continues to use it on an impaired basis; (c) failing to provide access to Customer premises as reasonably requested by Granite, its Providers or their agents to enable Granite to comply with its obligation, including having a Customer representative present to assist in performing diagnostic testing and to resolve problems should they exist; (d) the failure of a service or equipment that is not part of Access Services; (e) any inside wiring; and/or (f) CPE, router or firewall configuration changes made by Customer or made in response to security threats, breaches or attacks.
- Granite or Customer's scheduled outages, network maintenance or emergency maintenance.
  - Any force majeure event beyond the reasonable control of Granite including, but not limited to, cable cuts.
  - Any failure, issue or delay associated in whole or in part with Customer's provided connection to the Granite's network and/or Provider's networks including, but not limited to, local access and cross-connect.
  - Any failure, issue or delay associated, in whole or in part, with Customer's or third party's software, equipment, applications, facilities and/or internal network.
  - Any event or occurrence that results in "no trouble found" by Granite.
  - Access Services that have not been accepted by Customer or issues that occur within the first thirty (30) days of the Activation Date of a specific Access Service.
  - Access Services that do not directly interface a port on Granite's or its Provider's network via physical or logical connection.
  - During emergency network conditions where dynamic rerouting is required.
  - Only apply to circuits originating and terminating in the contiguous United States.

5. **Miscellaneous.** Granite, in its sole discretion, may change, modify, revise, amend and/or restate this SLA and/or any SLA Objective from time to time without notice. Such changes or revisions shall be deemed effective upon posting of an updated Access Services (Off-Net Services) SLA to the Granite website at [www.granitenet.com](http://www.granitenet.com). Capitalized terms not defined herein shall have the meaning set forth in the General Terms of Service or the applicable Additional Terms of Service.

Dated and effective as of August 17, 2015.

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**ACCESS SERVICES  
ADDITIONAL TERMS AND CONDITIONS OF SERVICE**

These Access Services Additional Terms and Conditions of Service (these “Access Services Terms of Service”) state important requirements regarding the use of Access Services, provided by Granite and/or its affiliates through the Core Network and Granite’s contracts with its Provider(s), by Customer and any of its end users, invitees, licensees, customers, agents or contractors. These Access Services Terms of Service state certain of Customer’s and Granite’s duties, obligations and rights. Customer should read them carefully as they contain important information. IF CUSTOMER DOES NOT AGREE TO THESE ACCESS SERVICES TERMS OF SERVICE, CUSTOMER MAY NOT USE ACCESS SERVICES AND CUSTOMER MUST TERMINATE USE OF SUCH ACCESS SERVICES IMMEDIATELY. These Access Services Terms of Service are in addition to the General Terms of Service.

The following additional terms and conditions are applicable to all Access Services:

**1. Services.**

1.1 Description of Services. “Access Services” shall mean, and consist of, (a) T1, Ethernet and other data circuits which provide connectivity to the Internet (i.e. dedicated internet access) between Customer premises and the Provider’s network (“Dedicated Internet Access Services”) and/or Multiprotocol Label Switching (“MPLS”) and/or private network services which provide virtual private network and traffic engineering applications (collectively, “MPLS Services”). All Access Services, including, without limitation, speed, rates and charges are subject to availability as determined by the underlying provider.

1.2 Granite Equipment and Core Network; Customer Equipment.

(a) Provider Equipment and the Core Network shall remain the sole and exclusive property of Granite and/or its Provider(s), as applicable, and nothing contained herein, in any Service Order Documents or in any other document or writing accepted by Granite grants or conveys to Customer any right, title or interest in any Provider Equipment or the Core Network, nor shall anything herein constitute, create or vest in Customer any easement or any other property right. Notwithstanding that it may be or become attached or affixed to real property, the Core Network and Provider Equipment will at all times remain the property of Granite and/or its Providers, as applicable. Customer may not, nor permit others to, alter, adjust, encumber, tamper, repair or attempt to repair, rearrange, change, remove, relocate, or damage any Provider Equipment or the Core Network without the prior written consent of Granite. Customer may not cause any liens to be placed on any Provider Equipment or the Core Network, and will cause any such liens to be removed within ten (10) days of Customer’s knowledge thereof. Customer shall be liable to Granite for any loss or damage to Provider Equipment or the Core Network caused by Customer or any of its end users, invitees, licensees, customers, agents or contractors. Nothing herein shall prevent Granite from using the Core Network and Provider Equipment to provide Access Services to other customers.

(b) To the extent a Service Order Document requires Granite to complete construction, extend the Core Network and/or obtain additional Underlying Rights (as defined below in this Section 1.2(b)), Customer shall use commercially reasonable efforts to assist Granite in obtaining such Underlying Rights as necessary to provide Access Services. In the event that Granite is unable to obtain or maintain any necessary Underlying Rights without incurring additional costs, unless Customer bears the costs of obtaining such Underlying Rights, Granite may cancel the applicable service order and shall incur no liability to Customer hereunder. Granite shall not be deemed to be in breach of the Agreement for its failure to meet any anticipated service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure event; (ii) failure to obtain, or delay in obtaining, any required Underlying Rights; (iii) construction delays; or (iv) any other circumstances beyond the control of Granite. “Underlying Rights” means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, access rights, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Core Network and/or for Granite to provide Access Services. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Access Services that are necessary for Granite to provide Access Services.

(c) Access Services utilize CPE purchased at Customer's own expense (unless otherwise provided in the Service Order Documents) and either provided by Granite or otherwise approved by Granite and/or its Provider(s). With respect to CPE provided by Granite, Customer shall (a) use such CPE for Access Services provided by Granite and Customer is not authorized to use CPE for any other purpose; (b) comply with all documentation and manufacturer's instructions; and (c) take reasonable measures to protect and care for CPE. Customer is responsible for all loss, damage or destruction to CPE. Promptly upon notice from Granite, Customer shall eliminate any hazard, interference or Service obstruction that any such CPE is causing or may cause as reasonably determined by Granite. Granite may, at its sole and absolute discretion, suspend Service if any CPE does not comply with the provisions herein.

### 1.3 Access.

(a) Upon expiration or termination of the applicable Service Term, Customer shall grant Granite access to its premises as necessary to enable Granite to remove the Provider Equipment and any elements of the Core Network. Granite, its employees, contractors and/or agents shall have access to any Provider Equipment, elements of the Core Network or facilities at a Customer premises.

(b) Neither Customer nor any of its end users, invitees, licensees, customers, agents or contractors shall have any recourse against any property owner or property manager of any premises to which any Access Services are delivered and/or at which the Core Network or Provider Equipment is located, as a result of or in reliance upon the Agreement. Without limiting the foregoing, this provision shall not be construed to impose any liability on Granite and/or its underlying Provider(s), nor shall Granite have any liability for, or on behalf of, such property owner or property manager.

1.4 Provisioning. Customer must provide Granite with a network assessment worksheet (in a form provided by or acceptable to Granite) for purposes of determining the current status and support characteristics of key network protocols, services and settings (including, but not limited to, a site survey document and Customer's local area network(s) minimum network requirements and firewall specifications) necessary for providing Access Services to Customer. Customer acknowledges that the provisioning of Access Services depends on the accuracy and timely receipt of information on the network assessment worksheet, other documents and/or responses to questionnaires and additional questions from Granite. Granite is not responsible for any delays in provisioning or failures of Access Services related to inaccurate information provided by Customer or changes in Customer's network that are not communicated to Granite. Granite and/or its Providers will evaluate, design, and provision Access Services based on a configuration proposed to, and accepted by, Customer. Customer acknowledges that there is no guaranty that Customer's current CPE or previously purchased or installed equipment can be used with Access Services.

### 1.5 MPLS Services and Ethernet Services.

(a) For any MPLS Services, including any VoIP Services over MPLS Services, (i) Customer is required to install the hub site first, with remote sites to follow and (ii) Customer will be responsible for payment on all circuits for MPLS Services on the Service Start Date of each specific circuit, whether or not all circuits/locations have been installed at the time of a circuit's Service Start Date.

(b) All orders for Access Services over Ethernet and Ethernet over Copper (EOC) (together, "Ethernet Services") are subject to complete engineering and facilities verification, and final availability of facilities. Circuit speed may not be verified until circuit turn up. Furthermore, while no guarantee of facilities is made in advance, all Ethernet Services orders require pre-engineering qualification with the quotes department prior to submission of any order.

### 1.6 Maintenance.

(a) Granite will endeavor to conduct (or cause to be conducted) scheduled maintenance of On-Net Access Services that is reasonably expected to interrupt Access Services between 12:00 midnight and 6:00 a.m. local time or, upon Customer's reasonable request, at a time mutually agreed to by Customer and Granite. Granite will use commercially reasonable efforts to notify Customer of scheduled maintenance that is reasonably expected to interrupt Service via telephone or e-mail, no less than two (2) days prior to commencement of such

maintenance activities. Customer shall provide a list of Customer contacts for maintenance and escalation purposes, which may be included on the Service Order Documents, and Customer shall provide updated lists to Granite, as necessary. With respect to Off-Net Access Services, Granite's may interrupt Access Services for scheduled maintenance and other operational reasons, and Granite will use commercially reasonable efforts to provide notice when possible (provided, Granite shall not be liable for any failure to provide such notice or for its Providers failing to provide such notice). Except as otherwise provided in the Agreement, Customer shall not be entitled to receive any remuneration for such scheduled interruptions.

(b) Granite and/or its Providers may perform emergency maintenance of On-Net Access Services or Off-Net Access Services in their respective sole and absolute discretion, with or without prior notice to Customer, to preserve the overall integrity of the Core Network or such Provider's network. Granite will use commercially reasonable efforts to notify Customer as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts any Access Services.

**2. Rates and Charges.** Rates and Charges for Access Services are as set forth in the applicable Service Order Document(s) or as otherwise communicated to Customer at the time of ordering such Access Services and may vary depending on Access Service type, features, equipment and other costs required to deliver the Access Service to Customer.

**3. Service Term.** The initial minimum Service Term of all Access Services shall begin on the Service Start Date and shall be as set forth in the applicable Service Order Documents or other writing accepted by Granite, provided, notwithstanding the foregoing, all Access Services shall commit to, and shall be deemed to have committed to, an initial minimum Service Term of at least twelve (12) months from the Service Start Date. Service Terms may be extended for additional monthly increments due to specific offerings or promotional terms. After the end of the initial minimum Service Term selected by Customer, and any renewal Service Terms selected by Customer, the Service Term shall automatically renew and continue on a month to month basis unless Customer provides prior written notice to Granite at least thirty (30) days prior to the end of the then current Service Term or the service is otherwise terminated in accordance with the Agreement.

**4. Early Termination Fees.** If any specific Access Services or the Agreement is disconnected or terminated after the Service Start Date but prior to the end of the initial minimum Service Term or any renewal Service Term selected by Customer, Customer shall be charged an Early Termination Fee in an amount equal to: (a) 100% of the last three (3) months average billings multiplied by the number of months (or portions thereof) remaining under the then current Service Term of the specific Access Services (including the remaining portion of any amortized CPE charges), plus (b) any and all outstanding funds due to Granite at the time of termination, including, but not limited to, rendered service, hardware and installation fees, plus (c) actual expenses incurred by Granite to activate or terminate Access Services, plus (d) any installation, construction, CPE or other non-recurring charges waived or discounted by Granite and any and all credits, allowances, discounts and/or other customer incentives provided by Granite to Customer.

Dated and effective as of May 8, 2018.



# Path to Partnership

WO: 173871

Inyo County

Quote Expires:  
08/18/2020

## Pricing Breakdown by Location

### 3 Years - DIA

Address	Product	QTY	Term	Activation Fee	/29 MRC	Access MRC	Total MRC
168 N. Edwards Independence, CA 93526	DIA FE - 10Mbps	1	3 Years	\$0.00	\$25.00	\$500.00	\$525.00
550 S Clay St Independence, CA 93526	DIA FE - 10Mbps	1	3 Years	\$0.00	\$25.00	\$500.00	\$525.00
<b>Access Total</b>		<b>2</b>					<b>\$1,050.00</b>

## Equipment Pricing

### Pricing Breakdown by Location

#### 3 Years Equipment Pricing

Address	Product Services	Qty	Term	MRC	Total MRC
168 N. Edwards Independence, CA 93526		4221	1 3 Years	\$21.50	\$21.50
<b>Location Total</b>					<b>\$21.50</b>
550 S Clay St Independence, CA 93526		4221	1 3 Years	\$21.50	\$21.50
<b>Location Total</b>					<b>\$21.50</b>
<b>3 Years Equipment Total</b>					<b>\$43.00</b>

## Voice Pricing

### Voice Pricing

Address	Product Services	Qty	MRC	Total MRC
168 N. Edwards Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
				<b>\$523.25</b>
<b>Location Total</b>				
550 S Clay St Independence, CA 93526	SIP Trunk	50	\$7.99	\$399.50
	Direct Trunk Overflow	1	\$35.00	\$35.00
	SIP Portal Requested	1	\$4.00	\$4.00
	DIDs	339	\$0.25	\$84.75
				<b>\$523.25</b>
<b>Location Total</b>				<b>\$1,046.50</b>
<b>Voice Total</b>				

### SIP LD Packages

	500	1,000	2,500	5,000	10,000	20,000	50,000	75,000	100,000	150,000	200,000	300,000
Minutes	500	1,000	2,500	5,000	10,000	20,000	50,000	75,000	100,000	150,000	200,000	300,000
Customer Price	\$16.00	\$30.00	\$70.00	\$125.00	\$240.00	\$400.00	\$850.00	\$1,125.00	\$1,300.00	\$1,750.00	\$2,150.00	\$3,100.00
Overage	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045	\$.045

**Total Monthly Recurring Cost = \$2,539.50**



# County of Inyo



## County Administrator - Personnel DEPARTMENTAL - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Sue Dishion

**SUBJECT:** Approval of Personal Services Contract for Deputy Environmental Health Director

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**RECOMMENDED ACTION:**

Request Board approve the personal services contract with Jerry Oser as the Deputy Environmental Health Director, at \$7,677 per month effective August 6, 2020, and authorize the County Administrator to sign.

**SUMMARY/JUSTIFICATION:**

This is a standard county contract which outlines the terms and conditions of employment for the Deputy Environmental Health Director. Mr. Oser has many years of experience in the Environmental Health Department as a Registered Environmental Health Specialist III. This contract is presented to your Board for approval.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose to not approve the contract and direct personnel staff to re-negotiate contract.

**OTHER AGENCY INVOLVEMENT:**

Personnel

**FINANCING:**

Funding for this position is included in the Environmental Health Budget (045400) in the Salaries and Benefits object codes. Payment shall follow Attachment B of the Personal Services contract.

**ATTACHMENTS:**

1. Jerry Oser Deputy Director of Environmental Health Contract

**APPROVALS:**

Monica Tinlin	Created/Initiated - 7/16/2020
Darcy Ellis	Approved - 7/16/2020
Monica Tinlin	Approved - 7/30/2020
Sue Dishion	Approved - 7/30/2020
Marshall Rudolph	Approved - 7/30/2020

Amy Shepherd

Final Approval - 7/30/2020

**AGREEMENT BETWEEN COUNTY OF INYO  
JERRY OSER  
FOR THE PROVISION OF PERSONAL SERVICES  
AS DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

**INTRODUCTION**

WHEREAS, JERRY OSER (hereinafter referred to as "Deputy Environmental Health Director") has been duly appointed as Deputy Environmental Health Director for Inyo County; and

WHEREAS, The County of Inyo (hereinafter referred to as "County") and Deputy Environmental Health Director desire to set forth the manner and means by which Deputy Environmental Health Director will be compensated for performance of duties.

NOW THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, County and Deputy Environmental Health Director hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Deputy Environmental Health Director shall furnish to the County those services and work set forth in Attachment A, attached hereto and by reference incorporated herein.

Services and work provided by the Deputy Environmental Health Director under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, resolutions, and directions.

**2. ADMINISTRATION OF CONTRACT.**

Deputy Environmental Health Director will report directly to and shall work under the direction of the Environmental Health Director. As the Personnel Director, the County Administrative Officer will administer this contract and exercise its provisions in consultation with the Environmental Health Director

**3. TERM.**

The term of this Agreement shall be from August 6, 2020 until terminated as provided below.

**4. CONSIDERATION.**

A. Compensation. County shall pay Deputy Environmental Health Director in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Deputy Environmental Health Director.

B. Travel and Per Diem. County shall reimburse Deputy Environmental Health Director for the travel expenses and per diem which Deputy Environmental Health Director incurs in providing services and work under this Agreement. Travel and per diem expenses will be reimbursed in accordance with the rates set forth in the Schedule of Travel and Per Diem Payment (Attachment C). County reserves the right to deny reimbursement to Deputy Environmental Health Director for travel or per diem expenses which are either in excess of the amounts that may be paid under the rates set forth in Attachment C, or which are incurred by the Deputy Environmental Director without the proper approval of the County.



C. No Additional Consideration. Except as expressly provided in this Agreement, Deputy Environmental Health Director shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement.

D. Manner of Payment. Deputy Environmental Health Director will be paid in the same manner and on the same schedule of frequency as other County officers and employees.

E. Federal and State Taxes. From all payments made to Deputy Environmental Health Director by County under the terms and provisions of this Agreement, County shall withhold all appropriate federal and state income taxes (resident and non-resident).

## **5. WORK SCHEDULE.**

Deputy Environmental Health Director's obligation is to perform the services and work identified in Attachment A which are needed within the County. It is understood by Deputy Environmental Health Director that the performance of these services and work will require a varied schedule. Deputy Environmental Health Director, in arranging his schedule, will coordinate and make arrangements to fulfill the requirements of the services and work which is necessary.

## **6. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Deputy Environmental Health Director to provide the services and work described in Attachment A must be procured by Deputy Environmental Health Director and be valid at the time Deputy Environmental Health Director enters into this Agreement. Further, during the term of this Agreement, Deputy Environmental Health Director must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, and professional licenses or certificates. The County will pay the cost of the licenses, certificates, and permits necessary for Program to perform duties as Deputy Environmental Health Director. All other licenses, certificates, and permits will be procured and maintained in force by Deputy Environmental Health Director at no expense to the County. Deputy Environmental Health Director will provide County, at County's request, evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Deputy Environmental Health Director and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

## **7. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

County shall provide Deputy Environmental Health Director with such supplies, reference materials, telephone service, and staff as is deemed necessary by the County for Deputy Environmental Health Director to provide the services identified in Attachment A to this Agreement.

## **8. COUNTY PROPERTY.**

A. Supplies, Equipment, etc. All supplies, equipment, tools, protective or safety devices, badges, identification cards, keys, uniforms, vehicles, reference materials, furniture, appliances, etc. provided to Deputy Environmental Health Director by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Deputy Environmental Health Director will use reasonable care to protect, safeguard and maintain such items while they are in Deputy Environmental Health Director's possession.

B. Products of Deputy Environmental Health Director's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes,

photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result or product of, Deputy Environmental Health Director's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Deputy Environmental Health Director will convey possession and title to all such properties to County.

**9. WORKERS' COMPENSATION.**

County shall provide workers' compensation coverage to Deputy Environmental Health Director for all acts performed in the course and scope of providing the services described in Attachment A to this Agreement. In the event a claim is made by Deputy Environmental Health Director for injuries received in the course and scope of providing such services, County's liability shall be limited to workers' compensation benefits payable under the California Labor Code.

**10. DEFENSE AND INDEMNIFICATION.**

In the event the Deputy Environmental Health Director is sued for acts performed within the course and scope of providing services and work described in Attachment A of this Agreement, County shall defend, indemnify, and hold the Deputy Environmental Health Director harmless from any and all liability arising from such acts as required by law.

**11. TERMINATION AND DISCIPLINE.**

Deputy Environmental Health Director's services under this Agreement may be terminated by County without cause, and at will, for any reason by giving to Deputy Environmental Health Director Ninety (90) days written notice of such intent to terminate. Deputy Environmental Health Director may terminate this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to terminate to County.

**12. ASSIGNMENT.**

This is an agreement for the personal services of Deputy Environmental Health Director. County has relied upon the skills, knowledge, experience, and training of Deputy Environmental Health Director as an inducement to enter into this Agreement. Deputy Environmental Health Director shall not assign or subcontract this Agreement, or any part of it, without the express written consent of the County.

**13. NONDISCRIMINATION.**

Deputy Environmental Health Director agrees to comply with various provisions of the federal, state, and county statutes, laws, and ordinances applicable to the County, and providing that no person in the United States shall, on the grounds of race, color, religion, ancestry, sex, age, physical handicap, or national origin, be subjected to discrimination.

**14. CONFIDENTIALITY.**

Deputy Environmental Health Director agrees to comply with various provisions of the federal, state, and county laws and ordinances providing that information and records kept, maintained, or accessible by the County, shall be privileged, restricted, or confidential. Disclosure of such confidential, privileged, or protected information shall be made by Deputy Environmental Health Director only as allowed by law.

**15. CONFLICTS.**

Deputy Environmental Health Director agrees that Deputy Environmental Health Director has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement. Deputy Environmental Health Director agrees to complete and file appropriate conflict of interest statements.

**16. POST AGREEMENT COVENANT.**

Deputy Environmental Health Director agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Deputy Environmental Health Director agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Deputy Environmental Health Director by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

**17. AMENDMENT.**

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form, and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

**18. NOTICE.**

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which Deputy Environmental Health Director or County shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail to the respective parties as follows:

**County of Inyo**  
County Administrator \_\_\_\_\_ Department  
P.O. Drawer N \_\_\_\_\_ Mailing Address  
Independence, CA 93526 \_\_\_\_\_ City and State

**Deputy Environmental Health Director:**  
JERRY OSER \_\_\_\_\_ Name  
3594 Gerkin Road \_\_\_\_\_ Address  
Bishop, CA 93514 \_\_\_\_\_ City and State

**19. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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**AGREEMENT BETWEEN COUNTY OF INYO  
AND JERRY OSER  
FOR THE PROVISION OF PERSONAL SERVICES  
AS DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**COUNTY OF INYO**

**DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

By: \_\_\_\_\_

By: JERRY OSER  
Print or Type Name

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


  
Signature

Dated: 7/20/20

APPROVED AS TO FORM AND  
LEGALITY:

Grace Chuchla  
County Counsel

APPROVED AS TO ACCOUNTING  
FORM:

  
County Auditor

APPROVED AS TO PERSONNEL  
REQUIREMENTS:

S. W. DC  
Personnel Services

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND JERRY OSER  
FOR THE PROVISION OF PERSONAL SERVICES  
AS DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

**TERM:**

**FROM: August 6, 2020 TO: TERMINATION**

**SCOPE OF WORK:**

Deputy Environmental Health Director shall perform the duties and responsibilities as identified in the job description for Deputy Environmental Health Director attached hereto.

## **DEPUTY DIRECTOR of ENVIRONMENTAL HEALTH**

### **DEFINITION**

To plan, organize, manage, and direct the administrative and operational activities of assigned division(s) within the Environmental Health Department; to direct, manage, and review the work of assigned staff; to establish and implement assigned divisions' objectives and performance standards; to serve as a member of the department management team which is responsible for fulfilling the mission and carrying out the policies of the department; to promote and participate in collaborative activities, programs, and projects that cross functional areas; and to function as a positive and cooperative team member and a proactive team leader.

### **DISTINGUISHING CHARACTERISTICS**

The Deputy Director of Environmental Health classification recognizes positions that provide full second-line, direct supervision to employees within assigned and major division(s) within the Environmental Health Department and assumes substantive and significant administrative and operational responsibility for both assigned division(s) and over-all departmental strategic planning and implementation. The Deputy Director positions also performs general administrative tasks for the Environmental Health Director and acts as a representative of the department to the County, other County departments and outside agencies/organizations as assigned.

### **LEVEL OF RESPONSIBILITY AND SCOPE**

Receives general direction from the Environmental Health Director.

Exercises direct supervision over supervisory, professional, technical, and clerical personnel.

### **EXAMPLES OF ESSENTIAL DUTIES – Duties may include, but are not limited to, the following:**

Plans, organizes directs, and manages all administrative and operational activities within designated areas of responsibility and assigned division(s); monitors and evaluates work in progress on an on-going basis to ensure compliance with departmental mission, goals, and policies.

**COUNTY of INYO**  
**Deputy Director of Environmental Health**

Identifies, develops, and implements goals, objectives, and activities to be accomplished within assigned division(s); directs, coordinates, and evaluates the implementation of operational strategies and plans.

Serves as a departmental management team member participating in the strategic planning, development and implementation of departmental policies, procedures, and operations.

Participates in the identification and allocation of resources (fiscal, staffing, and materials); and contributes to the problem-solving, decision making, and planning activities of the Department.

Provides professional and managerial resources to the Environmental Health Director, departmental management team, other County departments, outside agencies, and the general public in a responsible, positive, and supportive manner.

Represents the Environmental Health Department within the County organization as well as outside agencies, local communities, special interest groups, businesses, and the general public utilizing principles of effective customer service.

Establishes and maintains open communications with other County departments, collaborative teams, and other governmental organizations; coordinates data, resources, and work products in support of a productive and positive working relationship.

Directs, supervises, and participates in the development and on-going administration of assigned division(s)' and projects' budgets; coordinates and directs the forecasting of funds and resources needed; researches and analyzes funding resources and availability; provides justifications for requested resources.

Acts as a professional and technical resource related to assigned division(s) to assigned staff, the Environmental Health Department, the County organization, outside agencies, and the general public; provides advice, expertise, and resources in designated areas of responsibilities to multi-disciplinary projects and collaborative efforts.

Participates in the development and administration of the departmental budgets as assigned; provides advice and support in the on-going monitoring and adherence to departmental budget administration; may participate in County-wide taskforces, committees, and project teams to ensure responsible administration of resources, budgets in accordance with County's needs and priorities.

Participates in the selection of staff; reviews and approves/disapproves staff training; conducts performance evaluations; recommends disciplinary procedures as necessary; implements discipline procedures as directed.

Researches, negotiates, prepares and administers contracts with consultants, contractors, service providers, and/or vendors of various services; researches potential funding sources, develops grant applications/proposals, negotiates agreements, and administers grant programs and budgets.

Acts as primary resource regarding assigned division(s)' and related programs/projects' activities, operations, and processes; answers questions and provide information in response to requests and inquiries; investigates complaints and recommends/implements corrective action as necessary to resolve complaints.

**COUNTY of INYO**  
**Deputy Director of Environmental Health**

In the absence of the Environmental Health Director, to assume the responsibility of the Environmental Health Director as necessary and as assigned.

Performs related duties as assigned.

**MINIMUM QUALIFICATIONS**

**Knowledge of:**

- Advanced methods and procedures for inspecting and correcting unsanitary conditions.
- Standard and accepted methods of responding to hazardous materials risks and other public health emergency situations.
- Standard and accepted methods of identifying a wide range of hazardous materials and determining risks.
- A wide range of public health risks and appropriate responses to those risks.
- Functions and operations of related governmental agencies and community organizations.
- Provisions of the penal codes relating to public nuisances.
- Contemporary trends and practices of Environmental Health operations.
- Advanced principles and practices of management, leadership, motivation, team building and conflict resolution.
- Standard and accepted organizational and management practices as applied to development, analysis, and evaluation of programs, policies and operational needs.
- Standard and accepted principles and practices of budget preparation and administration.
- Pertinent local, state and federal rules, regulations and laws.
- Standard and accepted office procedures, methods and computer equipment.
- Standard and accepted principles and practices of research, analysis and management.
- Advanced principles of supervision, training and performance evaluations.
- Standard and accepted principles and practices of work safety.

**Skill to:**

- Understand, interpret, and carry out a variety of complex oral and written directions in an independent manner.



**COUNTY of INYO**  
**Deputy Director of Environmental Health**

- On a continuous basis, analyze fiscal, operational and technical reports; interpret and evaluate staff reports; know laws, regulations and codes; observe performance and evaluate staff; problem solve issues of County-wide application; remember various personnel rules; and explain and interpret policy.
- Organize, implement and direct activities of professional, technical, field, office and clerical staff involved in assigned division(s) operations/activities.
- On a continuous basis, know and understand all aspects of assigned job; intermittently analyze work papers, reports and special projects; identify and interpret technical and numerical information; observe and problem solve operational and technical policy and procedures.
- Analyze budgets, working papers and technical reports; interpret and evaluate staff reports; know laws, regulations and codes; problem solve department related issues; and interpret County-wide and Departmental policies and procedures. and procedures.
- Analyze problems, identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals and objectives.
- Interpret and apply County and departmental policies, procedures, rules and regulations in an effective and timely manner.
- Successfully develop, manage and monitor multiple budgets, programs and expenditures.
- Negotiate with and persuade individuals and groups with diverse needs and priorities in an effective and positive manner.
- Develop and recommend policies and procedures related to assigned operations and for multi-disciplinary assignments.
- Make presentations to governing boards and community groups.
- Gain cooperation through discussion and persuasion.
- Work with various cultural and ethnic groups in a tactful and effective manner.
- Communicate clearly and concisely, both orally and in writing.
- Supervise, train and evaluate assigned staff.
- Plan, organize and schedule priorities for self and others in an effective and timely manner.
- Meet the physical requirements necessary to perform required duties in a safe and effective manner for self and others.
- Establish and maintain effective working relationships with those contacted in the performance of assigned duties.

**License or Certificate:**

- May need to possess a valid driver's license as required by the position. Proof of adequate vehicle insurance and medical clearance may also be required.

**COUNTY of INYO**  
**Deputy Director of Environmental Health**

**Experience and Training**

- Any combination of experience and training that would provide the required knowledge and skills is qualifying. A typical way to obtain the required knowledge and skills would be:

**Experience:**

At least eight (8) years of progressively responsible professional administrative experience in major Environmental Health projects, Animal Control activities, environmental hazard investigation, detection, and regulation consistent with the activities and operations of the County of Inyo's Environmental Health Department.

**Training:**

Equivalent to a bachelor's degree from an accredited college or university with major coursework in business, public administration, environmental health, or a closely related field.

**Typical Physical Requirements**

On a continuous basis, sit at desk or in meetings for long periods of time; intermittently, walk, stand and bend while going to/from other offices and taking files to/from meetings; twist to reach equipment surrounding desk; perform simple grasping and fine manipulation; use telephone and write or use a keyboard to communicate through written means; hear sufficiently to communicate with staff and to understand actions in public meetings, hearings, or administrative proceedings; and lift light weight. Stand to conduct field visits; hearing and speech to communicate in person and by telephone; minor climbing/hiking.

**Typical Working Conditions**

Most assigned work is normally performed in an office/public meeting environment. Incumbents will be, at times, exposed to a wide variety of climate and weather conditions while conducting fieldwork and driving. Continuous contact with County staff, management, local, state and federal agency representatives, general public, and outside organizations/agencies.

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND JERRY OSER  
FOR THE PROVISION OF PERSONAL SERVICES  
AS DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

**TERM:**

**FROM: August 6, 2020**

**TO: TERMINATION**

**SCHEDULE OF FEES:**

1. Deputy Environmental Health Director shall be paid \$7677 per month. Deputy Environmental Health Director shall be paid every two weeks on County paydays.
2. The County Administrator will review Deputy Environmental Health Director's performance annually. As a result of such review, the County Administrator may authorize an increase or decrease in Deputy Environmental Health Director's salary to a higher step in the range for Deputy Environmental Health Director's position.
3. To the extent not inconsistent with any other provision of this contract, the terms and conditions of Deputy Environmental Health Director's employment shall also be covered by the County's Personnel Rules and Regulations and by the Management Resolution. (Note: among other things, Articles XII and XIII of the Personnel Rules and Regulations, dealing with Disciplinary Procedures/Appeals and Grievances, will not apply to Deputy Environmental Health Director's employment.)
4. Deputy Environmental Health Director is entitled to forty paid administrative hours off every fiscal year. The administrative leave hours shall not accumulate and will be lost if not utilized during the fiscal year. The administrative leave shall have no cash value.
5. The County will provide a vehicle for the Deputy Director. -

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND JERRY OSER  
FOR THE PROVISION OF PERSONAL SERVICES  
AS DEPUTY ENVIRONMENTAL HEALTH DIRECTOR**

**TERM:**

**FROM: August 6, 2020      TO: TERMINATION**

**SCHEDULE OF TRAVEL AND PER DIEM PAYMENT:**

1. Subject to Paragraph 2 below, County will reimburse Officer for travel and per diem expenses in the same amount and to the same extent as County reimburses its permanent status merit system employees.
2. Officer will not be reimbursed for intra-county travel by private automobile to destinations less than seventy-five (75) miles from Independence, California.

**\\\\\\ NOTHING FOLLOWS\\\\\\**



# County of Inyo



## Clerk of the Board

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** August 4, 2020

**FROM:** Assistant Clerk of the Board

**SUBJECT:** Approval of Board of Supervisors Meeting Minutes

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**RECOMMENDED ACTION:**

Request Board approve the minutes of the regular Board of Supervisors meeting of July 28, 2020.

**SUMMARY/JUSTIFICATION:**

The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's webpage, [www.inyocounty.us](http://www.inyocounty.us).

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

N/A

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

N/A

**ATTACHMENTS:**

**APPROVALS:**

Darcy Ellis  
Darcy Ellis

Created/Initiated - 7/28/2020  
Final Approval - 7/28/2020