

**AGREEMENT BETWEEN COUNTY OF INYO  
AND (CONTRACTOR)  
FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the detailed network engineering design services of (Contractor) (hereinafter referred to as ("Design Professional / Consultant")), 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 Design Professional/Consultant 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 Design Professional/Consultant to perform under this Agreement will be made by the Regional Broadband Coordinator. Requests to the Design Professional/Consultant 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 Design Professional/Consultant by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Design Professional/Consultant 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 Design Professional/Consultant 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.

**2. TERM.**

The term of this Agreement shall be from (date) to (date) unless sooner terminated as provided below.

**3. CONSIDERATION.**

A. Compensation. County shall pay Design Professional/Consultant 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 Design Professional/Consultant at the County's request.

B. Travel and per diem. County shall reimburse Design Professional/Consultant for the travel expenses and per diem which Design Professional/Consultant incurs in providing services and work requested by County under this Agreement. Design Professional/Consultant shall request approval by the County prior to incurring any travel or per diem expenses. Requests by Design Professional/Consultant for approval to incur travel and per diem expenses shall be submitted to the Regional Broadband Coordinator. 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 Design Professional/Consultant 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 Design Professional/Consultant without the prior approval of the County.

C. No additional consideration. Except as expressly provided in this Agreement, Design Professional/Consultant 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, Design Professional/Consultant 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 \$ \_\_\_\_\_ (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. Design Professional/Consultant shall submit to the County, once a month, an itemized statement of all hours spent by Design Professional/Consultant in performing 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 hours were worked and describe the nature of the work which was performed on each day. This information will be used to provide the California Public Utilities Commission (CPUC) the required Contractor Reporting updates.

Upon receipt of the completed project designs from the Design Professional/Consultant, County shall submit those designs to the CPUC for reimbursement. Upon receipt of a reimbursement from the CPUC, County will remit the full amount of the reimbursement up to the Contract Limit to the Design Professional/Consultant within ten (10) business days.

Design Professional/Consultant understands and agrees that, despite the submission of monthly invoices to County, it shall receive no payment under this agreement until County receives a reimbursement from the CPUC at the end of the Term of this Agreement. Design Professional/Consultant further agrees that final payment to the Design Professional/Consultant shall be based solely on the reimbursement amount received by the County from the CPUC, not on the invoices submitted to the County throughout the life of this Agreement.

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 Design Professional/Consultant 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 Design Professional/Consultant's when it is anticipated that total annual payments to Design Professional/Consultant 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 Design Professional/Consultant under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Design Professional/Consultant. County has no responsibility or liability for payment of Design Professional/Consultant's taxes or assessments.

(4) The total amounts paid by County to Design Professional/Consultant, 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, Design Professional/Consultant shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

#### **4. WORK SCHEDULE.**

Design Professional/Consultant'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 Design Professional/Consultant that the performance of these services and work will require a varied schedule. Design Professional/Consultant 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, or municipal governments for Design Professional/Consultant to provide the services and work described in Attachment **A** must be procured by Design Professional/Consultant and be valid at the time Design Professional/Consultant enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Design Professional/Consultant 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 Design Professional/Consultant at no expense to the County. Design Professional/Consultant 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 Design Professional/Consultant 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. Design Professional/Consultant 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. Design Professional/Consultant 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.**

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

## **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 Design Professional/Consultant by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Design Professional/Consultant will use reasonable care to protect, safeguard and maintain such items while they are in Design Professional/Consultant's possession. Design Professional/Consultant will be financially responsible for any loss or damage to such items, partial or total, which is the result of Design Professional/Consultant's negligence.

B. Products of Design Professional/Consultant's Work and Services. Any and all compositions, publications, plans, 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, Design Professional/Consultant'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, Design Professional/Consultant will convey possession and title to all such properties to County.

## **8. INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES.**

For the duration of this Agreement Design Professional/Consultant shall procure and maintain insurance of the scope and amount specified in Attachment D and with the provisions specified in that attachment.

## **9. STATUS OF DESIGN PROFESSIONAL/CONSULTANT.**

All acts of Design Professional/Consultant, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent Design Professional/Consultant's, and not as agents, officers, or employees of County. Design Professional/Consultant, 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, Design Professional/Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Design Professional/Consultant is to be considered an employee of County. It is understood by both Design Professional/Consultant 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 Design Professional/Consultant:

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

B. Design Professional/Consultant 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 Design Professional/Consultant in fulfillment of this Agreement.

C. Design Professional/Consultant, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent Design Professional/Consultant's, and not as employees of County.

#### **10. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against liability, loss, damage, expense, costs arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

#### **11. RECORDS AND AUDIT.**

A. Records. Design Professional/Consultant shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Design Professional/Consultant shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Design Professional/Consultant 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 Design Professional/Consultant, 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 Design Professional/Consultant. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

#### **12. NONDISCRIMINATION.**

During the performance of this Agreement, Design Professional/Consultant, 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. Design Professional/Consultant 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. Design Professional/Consultant 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.

### **13. CANCELLATION.**

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

### **14. ASSIGNMENT.**

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

### **15. DEFAULT.**

If the Design Professional/Consultant 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 Design Professional/Consultant in default and terminate this Agreement upon five (5) days written notice to Design Professional/Consultant. Upon such termination by default, County will pay to Design Professional/Consultant all amounts owing to Design Professional/Consultant for services and work satisfactorily performed to the date of termination.

### **16. 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-two (22) below.

### **17. CONFIDENTIALITY.**

Design Professional/Consultant 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 Design Professional/Consultant in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Design Professional/Consultant agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Design Professional/Consultant only with the express written consent of the County. Any disclosure of confidential information by Design Professional/Consultant without the County's written consent is solely and exclusively the legal responsibility of Design Professional/Consultant 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.

### **18. CONFLICTS.**

Design Professional/Consultant 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.

**19. POST AGREEMENT COVENANT.**

Design Professional/Consultant 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, Design Professional/Consultant agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any County, 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, Design Professional/Consultant by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

**20. 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.

**21. 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 Design Professional/Consultant 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-two (22) (Amendment).

**22. 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.

**23. 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 Design Professional/Consultant 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:**  
County Administrator – Broadband Coordinator  
1360 N. Main Street  
Bishop, CA

**Design Professional/Consultant:**  
company  
address  
city

**24. 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.

# #

**AGREEMENT BETWEEN COUNTY OF INYO  
AND (CONTRACTOR)  
FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

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

**COUNTY OF INYO**

**DESIGN PROFESSIONAL/CONSULTANT**

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

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

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

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

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

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 INSURANCE REQUIREMENTS:

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

**ATTACHMENT A**  
**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND (CONTRACTOR)**  
**FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

**TERM:**

**FROM:            TO:**

**SCOPE OF WORK:**

**ATTACHMENT B**  
**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND (CONTRACTOR)**  
**FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

**TERM:**

**FROM:            TO:**

**SCHEDULE OF FEES:**

**ATTACHMENT C**  
**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND (CONTRACTOR)**  
**FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

**TERM:**

**FROM:            TO:**

**SCHEDULE OF TRAVEL AND PER DIEM PAYMENT:**

No travel or per diem to be paid under this contract.

**ATTACHMENT D**  
**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND (CONTRACTOR)**  
**FOR THE PROVISION OF DETAILED NETWORK ENGINEERING DESIGN SERVICES**

**TERM:**

**FROM:            TO:**

**SEE ATTACHED INSURANCE PROVISIONS**