

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF TULARE
AND
CITY OF EXETER
FOR
RADIO AND COMMUNICATION SERVICES**

This Memorandum of Understanding (“MOU”) is hereby made and entered into between County of Tulare, hereinafter referred to as “COUNTY”, and City of Exeter hereinafter referred to as “CUSTOMER”. WHEREAS, COUNTY’s Information & Communications Technology Department’s Radio Shop (“TCiCT”) has the knowledge and expertise to provide radio and communications services; and CUSTOMER has need of radio and communications services; and COUNTY and CUSTOMER wish to document the terms and conditions under which radio and communication services will be provided by COUNTY; Therefore, the parties hereto agree as follows:

AGREEMENT

PURPOSE AND INTENT

The purpose of this Agreement is to set forth the terms and conditions of providing radio and communication services between the COUNTY and CUSTOMER.

SCOPE OF SERVICES

COUNTY, through TCiCT’s Radio Shop, will provide and charge radio and communication services to CUSTOMER as described in attached Exhibit A.

STANDARDS OF SERVICE

TCiCT’s Radio Shop exists mainly to provide services to COUNTY Departments. The Radio Shop can perform services for other government agencies, municipalities, special districts or other quasi-government organizations and associates as the COUNTY schedule allows. COUNTY retains the right not to engage on a given service request based on the job or workload of TCiCT. Although the COUNTY will strive to meet agreed-upon timelines, the need of other COUNTY Departments may impact those timelines, and there is no guarantee of meeting the timelines because of TCiCT’s primary obligation to other COUNTY Departments. It is understood that such services provided may be performed at locations governed by either COUNTY or CUSTOMER.

Upon completion of work, COUNTY will invoice CUSTOMER within 45 days of completed service. COUNTY expects payment within 30 days of invoice. Remittance should be sent to:

County of Tulare – TCiCT
Attn: TCiCT Fiscal
5957 South Mooney BLVD, Suite 2270
Visalia, CA 93277

Should the received radio and communication services provided by the TCiCT not meet CUSTOMER expectations, the CUSTOMER is to contact TCiCT for disposition and resolution.

TERM OF AGREEMENT

This agreement shall become effective on the date it is executed by the parties and shall terminate on June 30, 2025.

AMENDMENTS AND REVIEW

This Agreement represents the entire agreement between the Parties as to its subject matter and no prior oral or written understanding shall be of any force or effect. This Agreement may be modified or amended only upon written mutual consent of the Parties hereto.

SERVICES WARRANTY

Labor services to be provided hereunder will be performed in a diligent, professional, and workman like manner in good faith and according to Good Industry Practices. The labor services provided under this Memorandum of Understanding shall be warrantied for a period of twelve (12) months following the satisfactory completion of the applicable services under each statement of work.

Parts/items provided to complete the statement of work shall fall under the factory warranty of that part and/or product provided. The factory warranty constitutes all of the warranties with respect to the sale of the parts/items to CUSTOMER. The COUNTY hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. COUNTY neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the parts/items.

COUNTY does not warranty:

- Damage by the CUSTOMER due to negligence or willful damage.
- CUSTOMER negligence to conduct regular maintenance.
- Any deterioration in appearance of the end product/item (including, without limitation, any scratches, stains, mechanical wear, or rust, etc.) or any other changes which occur after satisfactory completion and CUSTOMER acceptance of the applicable services under each statement of work.
- Normal wear and tear

GENERAL PROVISIONS

Independent Contractor Status

In the performance of services under this Agreement, COUNTY and its respective officers, agents and/or employees shall be deemed independent contractors and not officers, agents and/or employees of CUSTOMER; No employer-employee relationship exists between COUNTY and CUSTOMER. All such personnel provided by COUNTY under this Agreement are under the direct and exclusive supervision,

direction and control of COUNTY and COUNTY assumes full responsibility for the actions of such personnel in the performance of services hereunder. COUNTY shall not act or attempt to act or represent itself directly or by implication as an agent of CUSTOMER, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of CUSTOMER. CUSTOMER shall not act or attempt to act, or represent itself directly or by implication as an agent of COUNTY, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of COUNTY.

Assurances of Non-Discrimination

Neither CUSTOMER nor COUNTY shall discriminate in the employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

Indemnification

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government code §895.6, to the maximum extent permitted by law, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead CUSTOMER and COUNTY agree that each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents harmless from any and all claims, expenses or costs, damage to or destruction of tangible property, damages or liabilities imposed for injury (as defined in Government Code §810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties thereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement. It is understood that this indemnification covers those services provided at locations governed by either COUNTY or CUSTOMER.

Insurance

CUSTOMER and COUNTY shall be self-insured or maintain their own civil liability insurance coverage against any claim of civil liability arising out of the performance of this Agreement and provide appropriate evidence of such coverage to the other Party, upon request.

Right to Audit

COUNTY agrees to maintain adequate records and an audit trail to support the charges made to CUSTOMER. All such records shall be prepared in accordance with generally accepted accounting principles (GAAP), shall be clearly identified, shall be kept readily accessible, and shall be retained in compliance with COUNTY's record-retention policy. Upon request, COUNTY shall make such records available to CUSTOMER.

Dispute Resolution

If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the Parties, but in the case of disagreement, the mediator shall be selected by lot from among two nominations provide by each Party. All costs and fees required by the mediator shall be split equally by the Parties; otherwise each Party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either Party may pursue litigation to resolve the dispute.

Governing Law

This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this agreement is made in and shall be performed in Tulare County, California.

Termination

COUNTY and CUSTOMER will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination.

Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where services have been terminated, said termination will not affect any rights of the either party to recover damages against the other. CUSTOMER will pay COUNTY the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions otherwise provided in this Agreement. Neither party will pay lost anticipated profits or other economic loss arising out of or resulting from such termination.

Exhibits and Recitals

The Exhibits and the Recitals to this Agreement are fully incorporated into and the integral parts of this Agreement.

Construction

This Agreement reflects the contributions of both Parties and accordingly the provisions of Civil Code §1654 shall not apply to address and interpret any uncertainty.

Execution in Counterparts

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy of an original, with all signatures appended together, shall be deemed a fully executed Agreement.

Notices

Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered or sent by first class mail, postage prepaid and addressed as follows:

<u>County:</u> Board of Supervisors County Administration Bldg. 2800 West Burrel Visalia, CA 93291	<u>Copy to:</u> County of Tulare TCiCT 5957 South Mooney Blvd, Suite 2270 Visalia, CA 93291	<u>Customer:</u> City of Exeter 100 N C Street Exeter, CA 93221
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No Third-Party Beneficiaries Intended

Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

Waivers

The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

Conflict with Laws or Regulations/Severability

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

Disclaimers

1. CUSTOMER is hereby notified that said vehicle/apparatus is not insured or protected to the amount of the actual cash value thereof, or otherwise, against loss occasioned by theft, fire or vandalism, acts of nature, while the property remains with the COUNTY.
2. CUSTOMER agrees that no articles of property shall be left in the vehicle/apparatus and COUNTY is not responsible for inspection or loss thereof.
3. Vehicles and/or apparatus shall be picked up and removed from COUNTY facilities no later than five (5) business days after such notice has been given to said CUSTOMER.
4. CUSTOMER authorizes their duly authorized representative(s) to request statement of work from COUNTY, whereas COUNTY understands that all requests to complete a statement of work is from a duly authorized representative from CUSTOMER. All statements of work are due and payable based upon the duly authorized CUSTOMER representative.

5. CUSTOMER shall be provided a quote for each statement of work to be completed by COUNTY, prior to the beginning of such work. Acceptance of such quote by the CUSTOMER's duly authorized representative shall be considered accepted and authorized by CUSTOMER.
6. COUNTY shall provide a completed statement of work to Customer on completion of the stated work. CUSTOMER shall review and approve the completion of stated work prior to the acceptance of the completed statement of work.
7. COUNTY may provide limited on-site radio services to CUSTOMER. CUSTOMER shall assure that all safety protocols are followed, that the work being requested is within the scope of radio services provided by COUNTY, and that COUNTY may decline to complete such service requests.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

It is so agreed:

Chairman of the Board
Tulare County Board of Supervisors


Date



Kennon Keesevan, Assistant Director
Tulare County Information & Communications Technology

9/2/20

Date



City Manager
City of Exeter

8/25/2020

Date

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Senior Executive (if applicable)
City of Exeter

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Date



Tulare County Counsel
Approved to Form

9-3-2020

Date

20192047

Exhibit A
Scope of Services

COUNTY provides installation, maintenance, and repair of equipment installed in vehicles, base stations, and communication towers with the goal to maintain established standards of quality and interoperability across departments and other various local partners.

Service Provided – Statement of Work

This is an example of what can be offered by COUNTY.

Vehicle Types	Products	Services
Patrol Vehicles	Light Bars	Installation
Undercover Vehicles	Siren Controllers	Repairs
Public Safety Vehicles	Strobe Kits	Maintenance
Large Apparatus	Partitions	Troubleshooting
Command Vehicles	Spot Lights	Removal of Items
SWAT Vehicles	Beacon Lights	Radio Programming
Transport Vehicles	Switches	
Construction Vehicles	Backup Cameras	Microwave Radio
Command Trailers	Alarms	Drone Imaging
	Base Stations	Consulting
	Hand-Held Radios	On-Site Services

Charge Explanation & Detail

Charge Detail	Charge Rate
Per Hour Rate	\$77.00
Sales Tax	As permitted by the taxing authority and jurisdiction
Administrative Rate	10%, applied to parts/supplies only
Part /Supplies	Charged at cost to the CUSTOMER based on the actual cost to COUNTY

Note:

- Labor charges are calculated based on the basis of time spent to complete the job.
 - Rounded to the nearest quarter hour
- The charge rates are developed and approved through the annual cost allocation plan as approved by the State of California and County Auditor’s Office.
- The rates are updated annually by COUNTY and CUSTOMER accepts the increase(s) as a general practice of business for cost recovery by COUNTY; COUNTY shall notify CUSTOMER of the new rates annually.