

**NEO Fiber, Inc.
doing business as
NEO Connect**

FOURTH AMENDMENT TO AGREEMENT FOR SERVICES #4555

THIS FOURTH AMENDMENT to that Agreement for Services #4555 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and NEO Fiber, Inc., a Colorado corporation duly qualified to conduct business in the State of California, doing business as NEO Connect, whose principal place of business is 1318 Riverview Avenue, Glenwood Springs, Colorado 81601, and whose mailing address is Post Office Box 2664, Glenwood Springs, Colorado, 81602 (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, Consultant has been engaged by County to provide general broadband consultation services on an as-needed basis for the Chief Administrative Office pursuant to Agreement for Services #4555, dated January 30, 2020, First Amendment to Agreement for Services #4555, dated April 14, 2020, Second Amendment to Agreement for Services #4555, dated July 8, 2020, and Third Amendment to Agreement for Services #4555, dated January 6, 2022, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to modify the scope of work to include as-needed consulting services, amending **ARTICLE I, Scope of Services**, and adding **Exhibit A-2, Additional Services**;

WHEREAS, the parties hereto desire to amend the Agreement to extend the expiration date of January 29, 2023 for three (3) additional years, amending **ARTICLE II, Term**;

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$189,118, for an updated not-to-exceed amount of \$350,000 and to update County's invoice recipient, amending **ARTICLE III, Compensation for Services** and replacing **Exhibit B, Billing Schedule** with **Amended Exhibit B, Amended Billing Schedule**;

WHEREAS, the parties hereto desire to fully-replace or add specific Articles to update County's contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Consultant mutually agree to amend the terms of the Agreement in this Fourth Amendment to Agreement for Services #4555 on the following terms and conditions:

I. Exhibit A-2, marked "Additional Scope of Services," is added in its entirety, attached hereto and incorporated herein by reference. All references to Amended Exhibit A-1, Amended Scope of Services, throughout the Agreement shall read Amended Exhibit A-1, Amended Scope of Services and Exhibit A-2, Additional Scope of Services.

II. **ARTICLE II, Term**, of the Agreement is hereby amended in its entirety to read as follows:

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire on January 29, 2026, as amended.

III. **ARTICLE III, Compensation for Services**, of the Agreement is hereby amended in its entirety to read as follows:

For services provided herein, including all deliverables described in individual Work Orders issued pursuant to this Agreement, County agrees to pay Consultant monthly in arrears. Payment shall be made within forty-five (45) days following County receipt and approval of itemized invoices detailing the services rendered. Services shall include, but not be limited to those specified in Amended Exhibit A-1, Amended Scope of Services and Exhibit A-2, Additional Scope of Services.

For the purposes hereof, for the period beginning with the effective date of this Agreement and continuing until the day before the effective date of this Fourth Amendment to the Agreement, the billing rates shall be in accordance with Exhibit B, marked "Billing Schedule," incorporated herein and made by reference a part hereof.

For the period beginning with the effective date of this Amendment and continuing through the remaining term of the Agreement, the billing rates shall be in accordance with Amended Exhibit B, marked "Amended Schedule," incorporated herein and made by reference a part hereof.

In addition to the above, travel and/or mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. There shall be no markups allowed on travel rates for Consultant. Any reimbursements for travel and/or mileage will only be made if such expenses are included in the budget of an approved and fully executed Work Order issued pursuant to this Agreement. County will also reimburse Consultant for outside reproduction costs without markup.

The total amount of this Agreement, inclusive of all Work Orders and amended Work Orders, and all costs, taxes, and expenses shall not exceed \$350,000, as amended. It is understood and agreed that there is no guarantee either expressed

or implied that this dollar amount will be authorized under this Agreement through Work Orders.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Work Order number on their faces. Consultant shall bill County for only one (1) Work Order per invoice. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667
Attn: Patricia Soto

Or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement as specified in individual Work Orders, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XII, Default, Termination, and Cancellation, herein.

IV. The following articles are fully-replaced in their entirety as follows:

ARTICLE VI

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE IX

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their

employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time

to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
 3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XIX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement or any Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the

Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Work Order or the total amount of the Agreement, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XII, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Consultant shall complete and sign the attached Exhibit C, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Consultant, if any, to any officer of County.

ARTICLE XX

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

V. The following articles are hereby added to the Agreement.

ARTICLE XXXII

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.

2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXXIII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XXXIV

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

Except as herein amended, all other parts and sections of Agreement for Services #4555 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to Agreement for Services #4555 on the dates indicated below.

--COUNTY OF EL DORADO--

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

**--NEO FIBER, INC.
doing business as
NEO CONNECT--**

By: *Diane Kruse*
Diane Kruse (Jan 18, 2023 06:05 MST)

Dated: 01/18/2023

Diane Kruse
Chief Executive Officer
"Consultant"

By: *Diane Kruse*
Diane Kruse (Jan 18, 2023 06:05 MST)

Dated: 01/18/2023

Diane Kruse
Secretary

**NEO Fiber, Inc.
dba NEO Connect**

Exhibit A-2

Additional Scope of Work

In accordance with Agreement #4555 between County and Consultant, including the reporting and deliverables requirements, Consultant shall assist County with as-needed Broadband consulting services.

SCOPE OF WORK:

Consultant's services shall include, but not be limited to, the tasks below, which shall be authorized by County through the issuance of Work Orders.

- Provide County with state and federal Broadband grant application support including, but not limited to, research and identification of qualifying project locations; technical design, engineering, or capital cost estimates; grant writing, Geographic Information Systems (GIS) map creation and assistance as needed per application requirements; proforma financial projections; and additional support as requested by County.
- Assist County in partnering with service providers on Broadband investments and initiatives by writing Request for Proposals or Invitation to Negotiate documents.
- Provide general Broadband consulting services as necessary and/or directed by County.

DELIVERABLES:

Unless otherwise indicated below, and notwithstanding any other provisions of this Agreement to the contrary, Consultant shall submit all deliverables in accordance with ARTICLE I, Scope of Services, unless otherwise indicated in each task described herein.

Consultant shall submit draft documents and reports to County for review and comment. Consultant shall incorporate County's comments into the final documents or reports subject to agreement by Consultant and County.

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Amended Exhibit B

Amended Billing Schedule

Labor Rates

Classifications	Hourly Rate
General Broadband and Consulting Services	\$175

The above rates include standard overhead items.

In accordance with ARTICLE III, Compensation for Services, other direct costs including special reproductions, delivery charges, and other outside services authorized herein, shall be invoiced at Consultant's cost with no mark up, for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

In accordance with ARTICLE III, Compensation for Services, the total costs, including any reimbursable travel costs, of this Scope of Work will not exceed the amount of \$350,000, as amended.

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Exhibit C

California Levine Act Statement

California Levine Act Statement

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any Member of the Board of Supervisor(s) of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for three (3) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclose of such contribution by a party to be awarded a specific contract.

A list of El Dorado County Board Members can be found at <https://www.edcgov.us/Government/BOS>. Proposers are responsible for accessing this link to review the names prior to answering the following questions.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the 12 months preceding the date of the submission of your proposals or the anticipated date of any Board action related to this contract?

YES NO

If yes, please identify the Board of Member(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any Member of the Board of Supervisors in the three months following any Board action related to this contract?

YES NO

If yes, please identify the Board Member(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this contract.

01/18/2023

Date

NEO Fiber, Inc.

Type or write name of company

Diane Kruse

Diane Kruse (Jan 18, 2023 06:05 MST)

Signature of authorized individual

Diane Kruse

Type or write name of authorized individual