

ORIGINAL

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

On-call Broadband Consulting Services

AGREEMENT FOR SERVICES #4555

THIS AGREEMENT, 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");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to assist in providing general broadband consultation services on as-needed basis;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Services: Consultant agrees to furnish personnel, equipment, and services necessary to assist County with general on-call broadband consulting services. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Services," incorporated herein and made by reference a part hereof.

Before proceeding with any work under this Agreement, the parties shall identify the specific services to be provided for each assignment in individual Work Orders to be issued in accordance with this Agreement. The specific services for each assignment

shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, and any task-related travel budget (if applicable) for each work assignment. Within an agreed timeframe as determined by County's Contract Administrator, following the meeting or telephone conference, and prior to commencement of work, County's Contract Administrator will issue Consultant a written project-specific Work Order identifying the services to be performed, the timeframe to complete the work, the required deliverables, and the not-to-exceed compensation amount for each Work Order.

No payment will be made for any work performed prior to issuance of, or outside the parameters specified in, each written Work Order and no payment will be made in excess of the not-to-exceed amount of each Work Order. No Work Order shall be issued which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed Agreement amount.

Work Order deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format, and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE XII, Default, Termination, and Cancellation, herein.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire two (2) years thereafter.

ARTICLE III

Compensation for Services: 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 Exhibit A.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Billing Schedule," incorporated herein and made by reference a part hereof. Other direct costs including subconsultants' services and outside services authorized herein shall be invoiced at Consultant's cost, without markup, for the services rendered. Any invoices that include subconsultant services and other direct costs shall be

accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

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 costs, Work Orders, and expenses shall not exceed \$15,000. It is understood and agreed 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
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

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.

ARTICLE IV

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

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 agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE VII

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Chief Administrative Office for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE VIII

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE IX

Independent Consultant/Liability: 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, associates, and subConsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

ARTICLE X

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed

budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement, and any Work Orders issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XI

Audit by California State Auditor: Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XII

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. 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.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired. In the event of

termination, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable 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 upon seven (7) calendar days' written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Work Order or total amount of the Agreement. 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 XIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Shawne Corley
Assistant Chief Administrative
Officer

With a copy to:

County of El Dorado
Chief Administrative Office
2850 Fairlane Court
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

NEO Fiber, Inc. dba NEO Connect
1318 Riverview Avenue
Glenwood Springs, Colorado 81601

Attn: Diane Kruse, CEO

or to such other location as Consultant directs.

ARTICLE XIV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XV

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVI

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Workers' Compensation Insurance with statutory limits as required by the laws of any and all states in which Consultant's employees are located, and Employer's Liability Insurance on a per occurrence basis with a limit of not less than \$1,000,000.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.

- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional Consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XVII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVIII

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

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 Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial

or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XII, Default, Termination, and Cancellation, herein.

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 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 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 8355 and Title 2, California Code of Regulations, Section 8103.

ARTICLE XXI

Nonresident Withholding: If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold County harmless for any action taken by the California Franchise Tax Board.

ARTICLE XXII

County Payee Data Record Form: All independent Consultants or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXIII

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIV

Licenses: Consultant hereby represents and warrants that Consultant and any of its SubConsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its SubConsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its SubConsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXV

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Shawne Corley, Assistant Chief Administrative Officer, or successor.

ARTICLE XXVII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXVIII

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIX

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXX

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXI

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Contract Administrator Concurrence:

By: 
Shawne Corley
Assistant Chief Administrative Office

Dated: 1/24/2020

Requesting Department Head Concurrence:

By: 
Don Ashton, MPA
Chief Administrative Office

Dated: 1/27/2020

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By:  _____

Dated: 1/30/2020

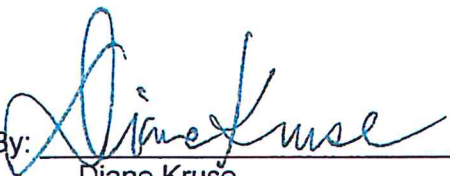
Purchasing Agent
Chief Administrative Office
"County"

--NEO FIBER INC.

dba

NEO CONNECT--

a Colorado Corporation

By:  _____
Diane Kruse
CEO & Corporate Secretary
"Consultant"

Dated: 1/15/20

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

Exhibit A

Scope of Services

In accordance with Agreement for Services #4555 between County and Contractor, Contractor shall accomplish the work described below.

AGREEMENT OVERVIEW:

Contractor shall implement the Scope of Work described below in accordance with the terms and conditions, including the reporting and deliverable requirements, of this Agreement.

SCOPE OF SERVICES DESCRIPTION:

The following general and on-call, as needed consulting services are included within this Scope of Work:

Responding to County staff members' questions regarding Broadband, smart city, or telecommunication matters, including but not limited to rights of way management, utility and service provider entities, policy and ordinance implementation, service provider, and other utility, government, transportation, or other partners, technical design, engineering, or capital cost estimates, Broadband strategies, business operations, and grant applications.

DELIVERABLES:

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

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

Draft deliverables shall be submitted via electronic file and Contractor shall produce the following using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Final signed deliverables shall be submitted in Adobe portable document format (pdf) format to County unless otherwise stated. Contractor shall work closely with County throughout the Project.

Contractor shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement.

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

Exhibit B

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 \$15,000.

ORIGINAL

NEO Fiber, Inc.

doing business as

NEO Connect

FIRST AMENDMENT TO AGREEMENT FOR SERVICES #4555

THIS FIRST 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");

RECITALS

WHEREAS, Consultant has been engaged by County to assist in providing general broadband consultation services on an as-needed basis for the Chief Administrative Office pursuant to Agreement for Services #4555, dated January 30, 2020, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to update the scope of services to include consulting services for pre-grant Broadband efforts and researching of areas within the County that would qualify for upcoming grant opportunities, amending **ARTICLE I, Scope of Services**, and replacing Exhibit A, marked "Scope of Services," with Amended Exhibit A, marked "Amended Scope of Services";

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$35,882, amending **ARTICLE III, Compensation for Services**;

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 First Amendment to Agreement on the following terms and conditions:

- I. Exhibit A, Scope of Services is replaced in its entirety with Amended Exhibit A, Amended Scope of Services attached hereto and incorporated herein by reference. All references to Exhibit A, Scope of Services throughout the Agreement are substituted with Amended Exhibit A, Amended Scope of Services.

II. ARTICLE I, Scope of Services, of the Agreement is amended in part to read as follows:

Consultant agrees to furnish personnel, equipment, and services necessary to assist County with general on-call broadband consulting services. Services shall include, but not be limited to, those tasks as identified in Amended Exhibit A, marked "Amended Scope of Services," incorporated herein and made by reference a part hereof.

III. ARTICLE III, Compensation for Services, the fourth paragraph of the Article is amended in its entirety to read as follows:

The total amount of this Agreement, as amended, inclusive of all costs, taxes, Work Orders, and expenses shall not exceed \$50,882. 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.

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 First Amendment to Agreement for Services #4555 on the dates indicated below.

--COUNTY OF EL DORADO--

By: Michele Weiner
Michele Weiner
Purchasing Agent
"County"

Dated: 4/14/2020

--NEO FIBER INC.

doing business as

NEO CONNECT --

By: Diane Kruse
Diane Kruse
CEO and Corporate Secretary
"Consultant"

Dated: 4/13/2020

NEO Fiber, Inc.

doing business as

NEO Connect

Amended Exhibit A

Amended Scope of Services

In accordance with Agreement for Services #4555 between County and Contractor, Contractor shall accomplish the work described below.

AGREEMENT OVERVIEW:

Contractor shall implement the Scope of Work described below in accordance with the terms and conditions, including the reporting and deliverable requirements, of this Agreement.

SCOPE OF SERVICES DESCRIPTION:

The following general and on-call, as needed consulting services are included within this Scope of Work:

Responding to County staff members' questions regarding Broadband, smart city, or telecommunication matters, including but not limited to rights of way management, utility and service provider entities, policy and ordinance implementation, service provider, and other utility, government, transportation, or other partners, technical design, engineering, or capital cost estimates, Broadband strategies, business operations, and grant applications as well as consulting services related to pre-grant Broadband effort, including researching areas of County which would qualify for upcoming grant opportunities.

DELIVERABLES:

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

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

Draft deliverables shall be submitted via electronic file and Contractor shall produce the following using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Final signed deliverables shall be submitted in Adobe portable document format (pdf) format to County unless otherwise stated. Contractor shall work closely with County throughout the Project.

Contractor shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement.

ORIGINAL

NEO Fiber, Inc.
doing business as
NEO Connect

On-call Broadband Consulting Services

SECOND AMENDMENT TO AGREEMENT FOR SERVICES #4555

THIS SECOND 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");

RECITALS

WHEREAS, Consultant has been engaged by County to provide general broadband consultation services on an as-needed basis for Chief Administration Office pursuant to Agreement for Services #4555, dated January 30, 2020 and First Amendment to Agreement for Services #4555, dated April 14, 2020 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 Broadband grant preparation, amending **ARTICLE I, Scope of Services**, and replacing **Amended Exhibit A, Amended Scope of Services** with **Amended Exhibit A-1, Amended Scope of Services**;

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$30,000, amending **ARTICLE III, Compensation for Services**;

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 Second Amendment to Agreement on the following terms and conditions:

I. Amended Exhibit A, Amended Scope of Services is replaced in its entirety with Amended Exhibit A-1, Amended Scope of Services attached hereto and incorporated herein by reference. All references to Amended Exhibit A, Amended Scope of Services throughout the Agreement are substituted with Amended Exhibit A-1, Amended Scope of Services.

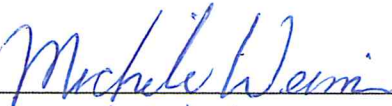
II. **ARTICLE III, Compensation for Services**, the fourth paragraph of the Article is amended in its entirety to read as follows:

The total amount of this Agreement, as amended, inclusive of all costs, taxes, Work Orders, and expenses shall not exceed \$80,882. 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.

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

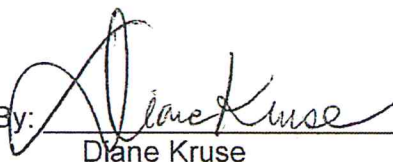
IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement for Services #4555 on the dates indicated below.

--COUNTY OF EL DORADO--

By: 
Michele Weimer
Purchasing Agent
"County"

Dated: 7/8/2020

--NEO FIBER, INC. dba NEO CONNECT--

By: 
Diane Kruse
CEO and Corporate Secretary
"Consultant"

Dated: 7/5/2020

NEO Fiber, Inc.

doing business as

NEO Connect

Amended Exhibit A-1

Amended Scope of Services

In accordance with Agreement for Services #4555 between County and Consultant, Consultant shall accomplish the work described below.

AGREEMENT OVERVIEW:

Consultant shall implement the Scope of Work described below in accordance with the terms and conditions, including the reporting and deliverable requirements, of this Agreement.

SCOPE OF SERVICES DESCRIPTION:

The Scope of Work includes the following general and on-call, as needed consulting services. Consultant shall perform the following tasks:

- Respond to County staff members' questions regarding Broadband, smart city, or telecommunication matters, including but not limited to rights of way management, utility and service provider entities, policy and ordinance implementation, service provider, and other utility, government, transportation, or other partners, technical design, engineering, or capital cost estimates, Broadband strategies, business operations, and grant applications;
- Perform consulting services related to pre-grant Broadband effort, including researching areas of County which would qualify for upcoming grant opportunities; and
- Perform Broadband grant preparation

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.

Draft deliverables shall be submitted via electronic file and Consultant shall produce the following using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS

Project, and MS Excel). Final signed deliverables shall be submitted in Adobe portable document format (pdf) format to County unless otherwise stated. Consultant shall work closely with County throughout the Project.

Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement.

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

THIRD AMENDMENT TO AGREEMENT FOR SERVICES #4555

THIS THIRD 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");

RECITALS

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

WHEREAS, the parties hereto desire to amend the Agreement to extend the expiration date of January 29, 2022 for one (1) additional year, 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 \$80,000, for an updated not-to-exceed amount of \$160,882, amending **ARTICLE III, Compensation for Services**;

WHEREAS, the parties hereto desire to amend the Agreement to update County address, amending **ARTICLE XIII, Notice to Parties**;

WHEREAS, the parties hereto desire to amend the Agreement to update County's Contract Administrator, amending **ARTICLE XXVI, Contract Administrator**;

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 Third Amendment to Agreement on the following terms and conditions:

- I. **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, 2023.

II. **ARTICLE III, Compensation for Services**, the fourth and fifth paragraph of the Article are amended in their entirety to read as follows:

The total amount of this Agreement, as amended, inclusive of all costs, taxes, Work Orders, and expenses shall not exceed \$160,882. 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: Kevin Willard

Or to such other location as County directs.

III. **ARTICLE XIII, Notice to Parties**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

Attn.: Kyle Zimbelman
Economic and Business
Relations Manager

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

NEO Fiber, Inc. dba NEO Connect
1318 Riverview Avenue
Glenwood Springs, Colorado 81601

Attn: Diane Kruse, CEO

or to such other location as Consultant directs.

- IV. ARTICLE XXVI, Contract Administrator**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XXVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Kyle Zimbelman, Economic and Business Relations Manager, Planning and Building Department, or successor.

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 Third Amendment to Agreement for Services #4555 on the dates indicated below.

--COUNTY OF EL DORADO--

By: *Michèle Weimer*
Michèle Weimer (Jan 6, 2022 15:54 PST)

Dated: 01/06/2022

Purchasing Agent
"County"

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

By: *Diane Kruse*
Diane Kruse (Dec 20, 2021 12:03 MST)
Diane Kruse
Chief Executive Officer and
Corporate Secretary
"Consultant"

Dated: 12/20/2021

**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: Wendy Thomas

Dated: 1-24-2023

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: Myke Myer
Deputy Clerk

Dated: 1-24-2023

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

By: Diane Kruse
Diane Kruse (Jan 18, 2023 06:05 MST)
Diane Kruse
Chief Executive Officer
"Consultant"

Dated: 01/18/2023

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

Dated: 01/18/2023

**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.

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

Amended Exhibit B

Amended Billing Schedule

Labor Rates

<u>Classifications</u>	<u>Hourly Rate</u>
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.

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

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 disclosure 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

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

FIFTH AMENDMENT TO AGREEMENT FOR SERVICES #4555

THIS FIFTH 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, and Fourth Amendment to Agreement for Services #4555, dated January 24, 2023, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to increase the billing rates of the Agreement, amending **ARTICLE III, Compensation for Services** and replacing Amended **Exhibit B, Amended Billing Schedule** with **Amended Exhibit B-1, Amended Billing Schedule**;

WHEREAS, the parties hereto desire to fully-replace specific Articles to include updated 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 Fifth Amendment to Agreement for Services #4555 on the following terms and conditions:

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

ARTICLE III

Compensation for Services: 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 the 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 purposes hereof, for the period beginning with the effective date of the Fourth Amendment to the Agreement and continuing until the day before the effective date of this Fifth Amendment to 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.

For the period beginning with the effective date of this Fifth Amendment and continuing through the remaining term of the Agreement, the billing rates shall be in accordance with Amended Exhibit B-1, marked "Amended Schedule," incorporated herein and made by reference a part hereof.

The rates listed in Amended Exhibit B-1 may be adjusted on an annual basis with thirty (30) calendar days prior written notice and prior review and written approval by the County's Administrator. Any rate increase(s) resulting from a union agreement amendment, benefit cost increase, or prevailing wage rate or minimum wage adjustment must be accompanied by documentation supporting the requested increases. Any rate increases that are not accompanied by supporting documentation shall not exceed three percent (3%) annually. Any rate increases authorized by the County's Contract Administrator shall not increase the total not-to-exceed amount of the Agreement. In no event shall the total not-to-exceed amount of the Agreement be exceeded. This rate adjustment process described herein shall not change for the life of the Agreement unless otherwise specified in a written amendment.

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.

II. The following Articles of the Agreement are fully replaced in their entirety to read as follows:

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 (notice) that shall state the following:
- a. The alleged default and the applicable Agreement provision, and
 - b. 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.

2. If County terminates this Agreement, in whole or in part, for default:
 - a. 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.
 - b. 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.
 - c. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.
3. The following shall be events of default under this Agreement:
 - a. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 - b. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
 - c. 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.
 - d. 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, 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 Agreement. 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 XV

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

ARTICLE XVI

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit. County, including, without limitation, its

officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.

- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or

volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.
- P. Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same if requested.

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 Fifth Amendment to Agreement for Services #4555 on the dates indicated below.

--COUNTY OF EL DORADO--

By: 

Dated: 08/09/2024

Purchasing Agent
Chief Administrative Office
"County"

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

By: 
Diane Kruse (Aug 8, 2024 14:00 PDT)

Dated: 08/08/2024

Diane Kruse
Chief Executive Officer
"Consultant"

By: 
Diane Kruse (Aug 8, 2024 14:00 PDT)

Dated: 08/08/2024

Diane Kruse
Secretary

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

Amended Exhibit B-1

Amended Billing Schedule

Labor Rates

Classifications	Hourly Rate
General Broadband and Consulting Services	\$195

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.

Rate Increases:

The rates listed above may be adjusted in accordance with ARTICLE III, Compensation for Services.