

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA #: *B-8

AGENDA DATE: June 14, 2016

SUBJECT:

Approval to Enter into an Agreement with Delta Wireless, Inc. for the Expanded Distributed Antenna and Radio System for the Public Safety Center AB 900 Phase II Expansion Projects

BOARD ACTION AS FOLLOWS:

No. 2016-302

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended


2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Chief Executive Office

BOARD AGENDA #: *B-8

Urgent Routine

AGENDA DATE: June 14, 2016

CEO CONCURRENCE: *pht*

4/5 Vote Required: Yes No

SUBJECT:

Approval to Enter into an Agreement with Delta Wireless, Inc. for the Expanded Distributed Antenna and Radio System for the Public Safety Center AB 900 Phase II Expansion Projects

STAFF RECOMMENDATIONS:

1. Authorize the Project Manager to Enter into an Agreement with Delta Wireless, Inc. to expand the Distributed Antenna System (DAS) at the Public Safety Center AB 900 Phase II Project One and Three for a not a lump sum not to exceed amount of \$154,743.
2. Authorize the Project Manager to take all actions necessary to negotiate and finalize the Agreement.
3. Authorize the Project Manager to issue a Notice to Proceed upon receipt of proper insurance and bonds.
4. Authorize the Project Manager to sign change orders within the approved budget up to \$25,000, consistent with the County's Change Order Policy.

DISCUSSION:

The Public Safety Center uses a Distributed Antenna System (DAS) throughout the campus to allow Sheriff's staff to communicate with one another on radios. The AB 900 Phase II Project One and Project Three are over eighty percent complete and need to have the current DAS System expanded into these facilities.

On March 2, 2015, the Project Manager issued a Request for Qualifications and Proposals (RFQ/RFP) with a due date of April 15 2016. The Project Manager held two mandatory pre-proposal conferences and site visits. The first was held on March 25, 2016 and the second was held on April 6, 2016. Two proposals were received from Delta Wireless Inc. of Stockton, California and Marsh Creek LLC of Dixon, California. Both Respondents were invited to participate in an interview process.

Approval to Enter into an Agreement with Delta Wireless, Inc. for the Expanded Distributed Antenna and Radio System for the Public Safety Center AB 900 Phase II Expansion Projects

The Evaluation team ranked the proposals received from the Respondents using the following criteria:

Category	Points
Proposed Schedule	20 Points
Proposed Design and Design Approach	15 Points
Respondents Claim/Litigation Experience	10 Points
Compliance with County Service Needs	15 Points
Experience	10 Points
Quality of Proposal	5 Points
Total	75 Points

At this time, the Project Manager is recommending that County enter into an Agreement with Delta Wireless Inc. of Stockton, California to expand the DAS at the Public Safety Center based on the quality and responsiveness of their proposal. Below are the two Respondents proposal scores based on the criteria listed above:

Delta Wireless Inc.	70 Points
Marsh Creek Inc.	37 Points

Delta Wireless Inc.'s proposal is within the County's budget as detailed in the Fiscal Impact section below. They also happen to be the lowest responsible bidder on the project. This Agreement will be funded using existing authorized funds from the Public Safety Expansion Projects AB 900 Phase II Project One and Project Three which includes contingency funds.

Upon approval by the Board of Supervisors and receipt of proper insurance and bonds, Delta Wireless Inc. will begin working on the project with a scheduled completion in early fall 2016. It's important to note that tight coordination between Hensel Phelps and Delta Wireless will be required to implement both important parts of this Project and necessary coordination efforts are well underway.

POLICY ISSUE:

The Board of Supervisors support for this effort reflects the focus on public safety, and facility modernization.

FISCAL IMPACT:

On June 17, 2014, the Board of Supervisors approved the AB 900 Phase II Project One and Project Three budget. Included in this budget is \$772,500 in Project One and \$823,760 in Project Three for equipment. The total cost for the proposed DAS expansion system is \$154,743. Of that amount \$97,869 is for Project One and \$56,874 is for Project Three.

Approval to Enter into an Agreement with Delta Wireless, Inc. for the Expanded Distributed Antenna and Radio System for the Public Safety Center AB 900 Phase II Expansion Projects

Cost of recommended action:		\$ 154,743
Source(s) of Funding:		
AB 900 Phase II Project One Equipment Funds State 90%	\$ 88,082	
AB 900 Phase II Project One Existing County Match	\$ 9,787	
County PFF Project Three Equipment Funds	\$ 56,874	
Funding Total:		<u>\$ 154,743</u>
Net Cost to County General Fund		<u>\$ -</u>

Fiscal Year:	15/16
Budget Adjustment/Appropriations needed:	No

Fund Balance as of April 19, 2016 N/A

BOARD OF SUPERVISORS' PRIORITY:

Approval of this contract is consistent with the Board of Supervisors' priority of A Safe Community by ensuring the communications at the Public Safety Center run efficiently.

STAFFING IMPACT:

This portion of the project will be successfully delivered by existing Capital Projects Staff.

CONTACT PERSON:

Patricia Hill Thomas, Project Manager, Telephone: (209) 525-6333

ATTACHMENT(S):

1. AB900 Phase II Project One Agreement
2. Project Three Agreement

ATTACHMENTS AVAILABLE
FROM CLERK

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE COUNTY OF STANISLAUS AND DELTA WIRELESS, INC. FOR THE
EXPANSION OF THE FIRST RESPONDER DISTRIBUTED ANTENNA SYSTEM
IN PUBLIC SAFETY CENTER PROJECT ONE**

This Professional Services Agreement (the “**Agreement**”) is dated June 14, 2016 and is by and between the County of Stanislaus, a political subdivision of the State of California (“**County**”) and Delta Wireless, Inc., a California Corporation, licensed to do business in California (“**Consultant**”) relating to the First Responder DAS System Project at Public Safety Center Project One.

Recitals

WHEREAS, County wishes to retain Consultant to perform expansion of the Public Safety Center First Responder Distributed Antenna System Services at Public Safety Center Project One (“**Services**”);

WHEREAS, Consultant was selected by means of County’s consultant selection process, and represents that they possess all necessary training, licenses and permits to perform the Services required by County as set forth in this Agreement, and that their performance of such Services will conform to the highest standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

WHEREAS, Government Code sections 31000 and 53060 permit the County Board of Supervisors to enter into agreements for expert professional temporary services with individuals specially trained and experienced and competent to perform those services; and

WHEREAS, the services proposed in this Agreement are professional and temporary in nature.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

AGREEMENT

1. Definitions

1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

“Agreement”	This Agreement consists of this Agreement, together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, <u>Appendix A</u> (Services to be Provided by Consultant), <u>Appendix B</u> (Payments to Consultant), <u>Appendix C</u> (DAS System Timeline), <u>Appendix D</u> (Consultant Deliverables), <u>Appendix E</u> (Consultant Insurance), <u>Appendix F</u> (Consultant Staffing Plans), <u>Appendix G</u> (Bonding Requirements), <u>Appendix H</u> (Guaranty / Warranty Requirements), <u>Appendix I</u> (Project Schedule), <u>Appendix J</u> (Telecom Site Layout), <u>Appendix K</u> (Project One Telecom), <u>Appendix L</u> (Overall Site Map), <u>Appendix M</u> (PSC Existing Radio System) attached hereto.
“Consultant” / “Contractor”	Delta Wireless, Inc., a California corporation, licensed to do business in California, 1700 W. Fremont St., Stockton, CA 95203, 209-948-9611, mokafuji@deltawireless.com
“County”	County of Stanislaus
“Project”	The Stanislaus County First Responder DAS System Project in Ceres, California described in <u>Exhibit A to the RFQ/RFP</u> .

“Services”	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation general inspection, specialty construction inspection and materials testing services.
“Subconsultants”	Consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

2.1 All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude upon the completion of the Project.

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant may recover compensation for extended services as set forth in Appendix B.

3.3 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than Excusable Delays, Consultant shall apply such additional manpower and resources as necessary without Additional Services Compensation to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

4.1 County shall pay Consultant compensation according to the process established in Appendix B “Payments to Consultant”.

4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix D “Deliverables”, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County. County shall not be liable for, and Consultant shall not be entitled to, any payment for Services performed before this Agreement’s execution.

4.3 County will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amounts(s) upon County’s receipt of any requested documentation verifying the claimed amount(s) and County’s determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 calendar days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant’s transmittal of all deliverables to County required by Appendix A, Services to be Provided by Consultant and Appendix D, Consultant Deliverables.

4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated in Paragraph 6.1 below.

4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of their errors, omissions, breaches of this

Agreement, delays or other acts that caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Paragraph 21.3 below of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 calendar days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Stanislaus County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Paragraph 4.5, then County shall have satisfied its obligations under this Paragraph.

5. Maximum Costs

- 5.1 County's obligation hereunder shall not at any time exceed the amount approved by County's Board of Supervisors and approved by County for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its Supervisors, employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, and office equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Paragraph 17 below, County and Consultant shall direct all communications to each other as follows:

Stanislaus County

*Patricia Hill Thomas, Project Manager
thomasp@stancounty.com
1010 Tenth Street, Suite 6800
Modesto, CA 95354
(209) 525-4380*

Delta Wireless, Inc.

*Mitch Okafuji, Engineer
mokafuji@deltawireless.com
1700 W. Fremont St.
Stockton, CA, 95203*

- 6.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be those listed in its proposal dated April 15, 2016, Exhibit 1 to Appendix F, and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel may in the future cease to be employed by Consultant and because of the termination of such employment no longer able to provide Services. However, Consultant agrees that replacement of any of the listed personnel during the Agreement period

shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with replacement of personnel shall be borne exclusively by Consultant.

- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge County for the cost of training or "bringing up to speed" replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix A, Services to be Provided by Consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Consultant, and within the times specified in Appendix C, the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the high standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.
- 7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of Consultant for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (including providing legal counsel reasonably acceptable to County at no cost to County), indemnify and hold harmless State of California, the State Public Works Board, the California Department of Corrections and Rehabilitation, the Board of State and Community Corrections, the County, and their respective Supervisors, officers, agents, departments, officials, representatives, employees, and volunteers (collectively "**Indemnitees**") from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description, at law or equity, that arise out of, pertain to, or relate to (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.
- 8.2 Consultant shall defend (including providing legal counsel reasonably acceptable to County at no cost to County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, suit, liability

or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

9. Liability of County

- 9.1 Except as provided in Appendix A, Services to be Provided by Consultant and Appendix E, Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3, 4, and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.
- 9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and shall exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, County employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County or Consultant may have under this Agreement or any applicable law. All rights and remedies of County or Consultant, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Consultant shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which Consultant perform the Services required by the terms of this Agreement. Consultant shall be fully liable for the acts and omissions of it their Subconsultants, employees and agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and Consultant. Consultant acknowledge that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall make its designated representative available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

11. Insurance

11.1 Prior to execution of this Agreement, Consultant shall furnish to County Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, Insurance, which are attached and made a part of this Agreement. Consultant shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event Consultant fails to maintain any required insurance, and notwithstanding Paragraph 4.6 above, County may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Agreement (or Consultant shall promptly reimburse County for such expense).

12. Suspension of Services

12.1 County may, without cause, order Consultant to suspend, delay or interrupt Services pursuant to this Agreement, in whole or in part, for such periods of time as County may determine in its sole discretion. County shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Paragraph 12, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

13.1 If at any time County believes Consultant may not be adequately performing their obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or that County has provided written notice of observed deficiencies in Consultant's performance, County may request from Consultant prompt written assurances of performance and a written plan, acceptable to County, to correct the observed deficiencies in Consultant's performance ("**Cure Plan**"). The Cure Plan must include, as applicable, evidence of necessary resources, correction plans, Subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, must meet all applicable requirements and show a realistic and achievable plan to cure the breach. Consultant shall provide such written assurances and Cure Plan within ten (10) calendar days of the date of notice of written request. Consultant acknowledges and agrees that any failure to provide written assurances and Cure Plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and County may, in addition to any other legal or equitable remedies available to County, terminate Consultant's right to proceed under the Agreement, in whole or in part, for cause:

- a. Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- b. Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as

is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide County within the ten (10) calendar day period a written Cure Plan acceptable to County to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan); or

- c. Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) calendar days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide County within the ten (10) calendar day period a written Cure Plan acceptable to County to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan.)

13.3 In the event of termination by County as provided herein for cause:

- a. County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
- b. Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- c. Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement, including without limitation County's costs incurred in connection with finding a replacement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 15 below, and Consultant shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14. Termination of Agreement for Convenience

14.1 County may terminate performance of the Services under the Agreement in accordance with this Paragraph 14 in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("**Notice of Termination**") specifying the extent to which performance of the Services under the Agreement is terminated.

14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:

- a. Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
- d. Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
- e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
- f. Transfer title and possession of Consultant's and their Subconsultants' work product to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; County acknowledges that said documents were prepared for the purpose of the Project.
- g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and
- h. Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.

14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the certification County prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such three month period or authorized extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.

14.4 Subject to provisions of Paragraph 14.3 above, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

14.5 If Consultant and County fail, under Paragraph 14.4 above, to agree on the whole amount to be paid to Consultant because of termination of Services under this Paragraph 14.5, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:

- a. Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix B, Payments to Consultant. Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of Consultant's total costs of performing the Services.
- b. When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Consultant's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
- c. Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.

14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 14.5 above.

14.7 This Paragraph shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 14.2 above or costs authorized by County to settle claims from Subconsultants.

14.8 In arriving at amounts due Consultant under this Paragraph 14, there shall be deducted:

- a. All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- b. Any substantiated claim that County may have against Consultant in connection with this Agreement, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Paragraph 14, and not otherwise recovered by or credited to County.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies pursuant to this Agreement or at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.
- 15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant shall comply with the County's conflict of interest codes and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all private, confidential, or proprietary information disclosed by County to or discovered by Consultant in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant shall notify the County immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with the Services pursuant to this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Paragraph 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

17. Notices to the Parties

- 17.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.

17.2 Notice shall be sufficiently given for all purposes as follows:

- a. When personally delivered to the recipient, notice is effective on delivery.
- b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 17.

17.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.4 Addresses for the purpose of giving notice are set forth in Paragraph 6.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 17.

18. Record Keeping and Audit Requirements

18.1 Consultant shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. Consultant shall maintain a complete and current set of all books and records relating to the inspection and testing Services provided to the Project. County shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by Consultant relating to the work contemplated by this Contract. Within 90 calendar days after Final Completion, Contractor shall deliver to County those records necessary for County to perform a financial audit of the Project ("**Final Audit**").

18.2 Invoice and progress/final reports and all required audit reports shall be submitted to County in a timely manner.

18.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project, and shall be subject to examination and/or audit by County or designees, state government auditors or designees.

18.4 Make such books, records, supporting documentations, and other evidence available to County or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant agrees to include a similar right of County to audit records and interview staff in any subcontract related to the performance of this Contract.

18.5 Be advised that a partial source of financing for the agreement between County and Consultant for inspection and testing services for the Project is State Financing, and that County may not have funds to finance this Agreement independently of the State Financing. Consultant shall in all ways cooperate with County and BSCC in maintaining a good working relationship. Consultant shall cooperate as

instructed by the County in resolving any disputes arising under the BSCC Construction Agreement or the County's contract with the design-build contractor.

19. Subcontracting/Assignment/County Employees

19.1 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 19.1 shall confer no rights on any party and shall be null and void.

19.2 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

20. Other Obligations

20.1 Discrimination, Equal Employment Opportunity and Business Practices. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

20.2 Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on County premises. Consultant agrees that any violation of this prohibition by Consultant, their employees, agents or assigns shall be deemed a material breach of this Agreement.

20.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. Consultant acknowledge that, pursuant to the Americans with Disabilities Act ("**ADA**"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agree not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement. Consultant shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

20.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Consultant to penalties, to be determined by County's Assistant County Administrative Officer for General Services ("County ACAO"), including but not limited to: (a) termination of this Agreement; (b) disqualification of the Consultant from bidding on or being awarded a County contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the ACAO. To effectuate the provisions of this section, the ACAO shall have

the authority to examine Consultant's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Consultant under this Agreement or any other agreement between Consultant and County. Consultant shall report to the ACAO the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified Consultant that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Consultant shall provide County with a copy of their response to the complaint when filed.

21. Disputes

- 21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party, and a meeting between the Project Manager and principal of the Consultant shall then take place within five (5) calendar days of the date of the request.
- 21.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue their Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute. Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agree that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, County may terminate this Agreement for cause as provided herein.
- 21.3 In the event of claims exceeding **\$50,000**, as a precondition to commencing litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of JAMS, in Modesto, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Stanislaus County Superior Court from an approved list of JAMS qualified construction mediators. The parties may initially agree to engage in discovery prior to mediation. Should parties proceed with discovery, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et seq., and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

22. Agreement Made in California; Venue

- 22.1 This Agreement shall be deemed to have been executed in the City of Modesto, County of Stanislaus. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Stanislaus unless the parties agree otherwise in a written amendment to this Agreement.
- 22.2 The parties shall execute **four (4)** of this Agreement, each of which shall be deemed originals.

23. Compliance with Laws

- 23.1 Consultant shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

23.2 Consultant represent that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.

24. Miscellaneous

24.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

24.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 24.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.

24.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

24.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to in force in force any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

24.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

24.6 Consultant acknowledges that Consultant, and all Subconsultants hired by Consultant to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Subconsultants hired by Consultant to perform services under this Agreement are in compliance with the IRCA. In addition, Consultant agrees to indemnify, defend and hold harmless the County, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Consultant's employees, or the employees of any Subconsultant hired by Consultant, are not authorized to work in the United States for Consultant or its Subconsultant and/or any other claims based upon alleged IRCA violations committed by Consultant or Consultant's Subconsultant(s).

25. Entire Agreement; Modifications

25.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any

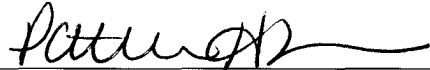
written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, written or oral, express or implied, which relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

- 25.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 25.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of County, Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 25.4 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require their Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 25.5 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 25.6 Changes in the Services made pursuant to this Paragraph 25 and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 25.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

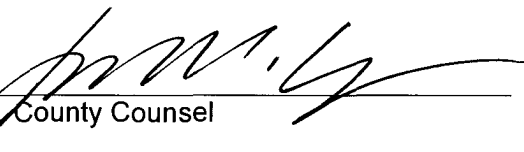
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

RECOMMENDED AND APPROVED
AS TO CONTENT:

COUNTY OF STANISLAUS

By 
Patricia Hill Thomas, Chief Operations
Officer

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By 
County Counsel

DELTA WIRELESS, INC.

corporation

Type of Entity
(corporation, partnership, sole
proprietorship)

By 
Signature

David Naasz

Typed Name

President

Title of Individual Executing
Document on behalf of Firm

APPENDIX A

EXPANSION OF THE PUBLIC SAFETY CENTER FIRST RESPONDER DISTRIBUTED ANTENNA SYSTEM

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as “**Consultant**” and the **County of Stanislaus**, hereinafter referred to as “**County**” providing for professional DAS Services.

1. GENERAL REQUIREMENTS OF CONSULTANT’S SERVICES
 - 1.1 Evaluate upgrade and expansion of the existing DAS system.
 - 1.2 Prepare stamped designs for the implementation of the expansion of the DAS system into Projects.
 - 1.3 Recommend appropriate products necessary for the expansion of the DAS system.
 - 1.4 Attend Weekly Quality Control (QC)/Quality Assurance (QA) as needed;
 - 1.5 Contractor shall coordinate its work with the work of other separate contractors, Owner, and utility owners. Contractor shall hold coordination meetings with other contractors, Owner and its representatives, and utility owners as required.
 - 1.6 Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents;
 - 1.7 Note that the Consultant is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value;
 - 1.8 Owner inspections are for the sole benefit of the Owner and do not:
 - a. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - b. Constitute or imply acceptance;
 - c. Affect the continuing rights of the Owner after acceptance of the completed work to pursue its rights and remedies relating to latent defects, gross mistakes, fraud or the Owner’s rights under any warranty or guarantee; or
 - d. Relieve the Contractor of responsibility for providing adequate quality control measures.
 - 1.9 The presence or absence of an Owner inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Owner’s written authorization.
 - 1.10 Consultant shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections as may be required by the Owner.
 - 1.11 Perform all necessary coring of concrete walls for routing of wire.
 - 1.12 Provide and install all needed Fire sealants, sleeves to maintain the rating of the wall system.

2 COUNTY RESPONSIBILITIES

County shall provide the following services and data to Consultant:

2.1 Payments

Issue job progress payments to Consultant in a timely manner.

2.2 Site Access

Provide site access to Consultant as requested through CM and IOR.

2.3 Contract Documents

County shall furnish Consultant with the construction documents prepared by Dewberry for the current Projects under construction for reference only.

2.4 Designated Representative

County shall designate a representative authorized to act in County's behalf with respect to the Project. County, or such authorized representative, shall examine documents submitted by Consultant and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of Consultant Services.

2.5 Legal, Accounting and Insurance Services

County shall furnish legal, accounting and insurance counseling services necessary to protect County's interest in the Project, including such auditing services as County may require to verify the Project Applications for Payment. County shall supply such services to protect solely its interests.

2.6 County Work

County reserves the right to perform work related to the Project with County's own forces, and to award contracts in connection with the Project which are not part of Consultant's responsibilities under the Agreement. Consultant shall notify County if any such independent action will in any way compromise Consultant's ability to meet Consultant's responsibilities under the Agreement.

2.7 Communications

County shall use its best efforts to advise Consultant of any fault or defect in Consultant's Services, the Project, or nonconformity with the Contract Documents, but any failure to do so shall not prejudice either parties' rights and duties under the Agreement.

END OF APPENDIX A

APPENDIX B

PAYMENTS FOR Consultant

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as "Consultant" and the **County of Stanislaus**, hereinafter referred to as "County" providing for the First Responder DAS System Project.

1. The maximum payment to Consultant under this Agreement for the Project known as the First Responder DAS System Project shall be for the lump sum amount not to exceed \$97,869.01.

2. METHODS OF PAYMENT FOR CONSULTANT'S SERVICES AND EXPENSES

2.1. PRICING PROPOSAL. The entire Scope of Work for cost by Consultant shall be a fixed fee lump sum amount based on Respondent's estimate of the necessary time, materials, and equipment required to provide the DAS Services. Respondents shall submit a pricing proposal, detailed cost breakdown by line item the menu of services to be provided for the Projects

2.2. EXTENDED SERVICES. Proposer shall be required to extend services at the same rate for up to six months beyond the Project completion date should County seek extended services. The extended services pricing will remain in force for up to six additional months (September 2017) beyond the base services provided through March 2017.

2.3. ADDITIONAL SERVICES. The County may also elect to contract for *Additional Services* under this Agreement for procurement of the selected DAS system or the expansion into Project 4. The proposal shall include Billing Rates for potential additional services/tasks of various key personnel. The Billing Rates shall remain constant throughout this Agreement, including for additional services, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason for the duration of the design-build construction of the Projects. Consultant shall be responsible for all portions of the Professional Services Agreement as included in Exhibit D.

3. TIMES OF PAYMENTS.

3.1. Consultant shall be paid according to actual percentage of completion of basic Services as specified in paragraph 2.1, above.

3.2. Consultant shall submit monthly statements for Basic and any Additional Services rendered and for Reimbursable Expenses incurred in a format acceptable to the County. The statements shall be based on Consultant's estimate of the proportion of completion of its services set forth above in Section 2.1, utilizing the Consultant's required work schedule organized by task. County shall promptly review Consultant monthly statement, and provided it is acceptable, shall make prompt payment thereon.

4. DEFINITIONS.

4.1. "Additional Services" mean services beyond the scope of the Services defined in this Agreement, provided that the Additional Services are not due to the errors and/or omissions of Consultant.

4.2. The "Billing Rates" are the hourly rates indicated on Exhibit 1 to this Appendix B attached hereto.

4.3. "Reimbursable Expenses Related to Additional Services" shall be limited to the specific expenses identified below while performing Additional Services. All other expenses are not

reimbursable and are deemed included in the Billing Rate. The Reimbursable Allowance is included in the lump sum of this Agreement.

4.3.1. Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by County to travel to a location more than 50 miles from either the project site, the Consultant's office(s), or County's office, incurred performing Additional Services. Travel expenses shall be limited to \$0.25/mile for travel by automobile, and the actual expense for travel by other means. Any air travel shall be by common carrier at actual fare charged for economy or coach class. Lodging and meal expenses shall be reimbursed at the current rates applicable to County employees.

4.3.2. Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

4.3.3. Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.

4.3.4. Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Agreement Documents, if any, incurred performing Additional Services.

4.3.5. Field Office Facilities. Providing and maintaining field office facilities, including furnishings and utilities incurred performing Additional Services.

4.3.6. Subconsultants. For Additional Services of subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore for general and administrative expenses.

4.3.7. Reimbursable Expenses. Reimbursable Expenses must be reasonable, incurred independently of expenses incurred on base scope contract work, and must be recorded separately of the base scope contract work with adequate supporting documentation; otherwise it is not recoverable.

END OF APPENDIX B

EXHIBIT 1 TO APPENDIX B-

BILLING RATES FOR CONSULTANT SERVICES

This is an exhibit attached to, and made a part of, the Professional Services Agreement dated June 14, 2016 by and between Delta Wireless, Inc., hereinafter referred to as "**Consultant**" and the **County of Stanislaus**, hereinafter referred to as "**County**" providing for professional in connection with the County's First Responder DAS System Project.

1. **BILLING RATES** -- The Billing Rates for Additional Services beyond the scope of Consultant's Pricing Proposal are the following unit rates:

Name	Hourly Rate
Engineer	\$130
Project Manager	\$115
Technician	\$115
Installer	\$98

2. **REIMBURSABLE EXPENSES** – Are included in the lump sum of this Agreement unless incurred in connection with Extended Services and tracked as required by the Agreement.

APPENDIX C

FIRST RESPONDER DAS PROJECT TIMELINE

This preliminary Milestone Schedule is an Appendix attached to, made a part of, and incorporated by reference to the Agreement dated June 14, 2016 between the County of Stanislaus (the “**County**”), and Delta Wireless, Inc., a California corporation, licensed to do business in California (“**Consultant**”) providing for professional services. Consultant understands that the dates within this preliminary Milestone Schedule may change as the services of the Project are performed..

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issuance of RFQ/RFP	County	March 2, 2016
Submittal of Written Questions Deadline	Potential Respondents	March 25, 2016
Addendum response to Distribution List	County	March 30, 2016
Proposals Due	Potential Respondents	April 6, 2016
Interviews	County	April 15, 2016
Respondent recommendation	County	June 3, 2016
Selected Respondent approval	Board	June 14, 2016
Commencement of Services Under PSA	County/Selected Respondent	June 14, 2016
Completion of all Services	Selected Respondent	August 26, 2016

County reserves the right to modify this schedule at any time at its sole discretion.

END OF APPENDIX C

APPENDIX D

DELIVERABLES FOR CONSULTANT'S SERVICES

This is an Appendix attached to, and made a part of, the Agreement dated June 14, 2016 by and between Delta Wireless, Inc., a California corporation, hereinafter referred to as "**Consultant**" and the **County of Stanislaus**, hereinafter referred to as "**County**" providing for First Responder DAS System Project.

Consultant's deliverables under the Agreement are enunciated throughout the RFP and include but are not limited to the following:

1. PROJECT DELIVERABLES

1.1 Consultant's task lists for County's coordination of its activities.

2. **DAS Services.** The deliverables considered part of DAS Services are defined in this Appendix D and include, but are not limited to, the following deliverables:

- 2.1 The consultant will maintain a monthly status report of the budget quantities and costs, quantities and cost expended through previous report period, quantities and cost this report period, and total quantities and cost to date. The status report will be submitted with the monthly billing.
- 2.2 Stamped designs for the expansion of the DAS system appropriate for Delta Wireless, Inc. to use to procure necessary equipment and to expand the system into the Project.
- 2.3 Recommendation of appropriate products for the DAS system.
- 2.4 Maintain accurate and timely reports.
- 2.5 Attend Weekly QA/QC meetings as needed.
- 2.6 Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents.
- 2.7 Maintain complete inspection records and make them available to the Owner, Inspector of Record and Consultant.

END OF APPENDIX D

APPENDIX E

CONSULTANT INSURANCE REQUIREMENTS

This is an Appendix attached to, made a part of, and incorporated by reference to the Agreement dated June 14, 2016 between the County of Stanislaus (the “**County**”), and Delta Wireless, Inc., a California corporation, licensed to do business in California (“**Consultant**”) providing for professional services.

1. Consultant’s Duty to Show Proof of Insurance. Consultant, in order to protect County and State and their board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant’s acts, errors, or omissions in connection with the performance of Consultant’s obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the County’s authorized insurance representative, Insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or County as an additional insured.

1.1 Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant’s performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

1.2 Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

1.3 Workers’ Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers’ compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers’ compensation for all of the Subconsultants’ employees, unless the Subconsultants’ employees are covered by the insurance

afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

1.4 Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

1.5 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.

1.6 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **Insurance terms and conditions:**

2.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

2.2 Stanislaus County as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the County of Stanislaus, its officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

2.3 State of California as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the Department of Corrections and Rehabilitation of the State of California; the Board of State and Community Corrections, an entity of the state government of the State of California; the State Public Works Board of the State of California, and their Officers, Agents, and Employees shall be named as additional

insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

2.4 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.

2.5 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The County will not accept such coverage unless the County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

2.6 All insurance afforded by Consultant pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the County, its officers, directors, agents, employees and volunteers; the Department of Corrections and Rehabilitation of the State of California; the Board of State and Community Corrections, an entity of the state government of the State of California; the State Public Works Board of the State of California, and their officers, agents, and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by Consultant. A waiver of right of recovery (waiver of subrogation) is only required when Consultant's personnel deliver services or performs service for the County while on County property.

2.7 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

2.8 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Consultant, County shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse County for the premiums and any associated costs, Consultant agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

2.9 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

2.10 County may (but is under no obligation to) secure wrap-up insurance, in which case Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Consultant's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by Consultant and its subconsultants by virtue of the County's obtaining wrap-up insurance, and the exclusion of this project from coverage of Consultant and subconsultants policies. Consultant and its subconsultants shall afford County

access to their books and records and cooperate with County in verifying the amount of savings realized.

END OF APPENDIX E

APPENDIX F

STAFFING PLAN FOR CONSULTANT'S SERVICES

This is an Appendix attached to, and made a part of and incorporated by reference to the Professional Services Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as "Consultant" and the COUNTY OF STANISLAUS, hereinafter referred to as "County" providing for professional services for the First Responder DAS System Project.

ARTICLE 1 – DAS SERVICES

1.1 Consultant's Staffing Plan includes, but is not limited to the following:

Name	Responsibility
Mitch Okafuji	Engineering
David Doty	Project Manager
Jerry Hignight	Project Manager
Art Weaver	Technician
Jim Rinehart	Technical Supervisor
Randy Costa	Technician
George Gonzalez	Technician
Karl Schweitzer	Technician
Steve Dickerson	Technician
Mike Turner	Technician
Thor Hang	Technician
Steve Landron	Technician
Daniel Mckee	Installer
Joe Goen	Installer
Andrew Martinez	Installer
Inness Braxton	Installer

ARTICLE 2 – KEY PERSONNEL AND SUBCONSULTANTS

2.1 Consultant's Key Personnel are identified in the Agreement Form.

ARTICLE 3 – CHANGES TO KEY PERSONNEL AND ADDITIONS TO STAFFING PLAN

3.1 For Key Personnel, Consultant's shall not remove, reassign or make changes to any of the Key Personnel or their assignment durations without County's prior written approval.

3.2 For personnel initially identified in the Staffing Plan by position only, Consultant's shall submit for review, comment and approval, resumes of each person proposed to fill each position, and/or replacements to personnel once approved, showing such person's experience and qualifications to fill such position. Such added personnel ("Added Personnel") shall be added to Consultant's staff as necessary, but subject to approval by County.

3.3 Unless directed to reduce staff by County, in the event that any Key Personnel or Added Personnel, for any reason thereafter ceases to fill that position, within ten (10) days thereof, Consultant's shall propose a replacement person for County's approval pursuant to the following process:

3.4 Consultant's shall prepare and submit to County for its review, comment and approval, a proposal listing all personnel that Consultant's proposes to assign to the Project as replacement, and the proposed duration of each such assignment.

3.5 Within fifteen (15) days following Consultant's submittal of the proposal and resumes, County shall either give its written approval of such submission or provide comments. In the event County approval is

withheld, Consultant's, in response to such comments, shall promptly, but no later than five (5) business days after receipt of County's comment, make all necessary and appropriate changes to the proposal (including changes in proposed staff) and resubmit it to County for its approval, and such process shall continue until County approves Consultant's proposed staffing. Such approvals shall not be unreasonably withheld.

3.6 For replacement of Key Personnel, Consultant's shall be subject to liquidated damages as described below, and also may not receive reimbursement for substitute personnel in amounts greater than would have been paid for the initial Key Personnel.

3.7 County may, in its sole discretion, direct Consultant to add to or reduce Consultant's staff to meet changing Project requirements.

ARTICLE 4 – UNSATISFACTORY PERSONNEL

4.1 Consultant shall remove any person employed by Consultant or any subconsultant whom County may deem incompetent, improper or a hindrance to the progress of any Work or Services on the Project, and in the event of any such removal, Consultant shall immediately replace (or cause to be replaced) such person with a properly qualified and experienced replacement and, in the case of removal of any person holding any position described in the Staffing Plan, Consultant shall propose properly experienced and qualified replacement personnel for County approval, pursuant to the same process as is described in Article 3 above.

ARTICLE 5 – LIQUIDATED DAMAGES FOR KEY PERSONNEL

5.1 Consultant and County agree that the personal services of the Key Personnel is a material term of the Agreement, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the County, the measure of which would be impractical or extremely difficult to fix, and in lieu of which County and Consultant have agreed to liquidated damages as described below.

5.2 County may assess and Consultant shall accept liquidated damages in the amount of three (3) times the gross monthly salary for unauthorized substitutions of any Key Personnel.

5.3 No liquidated damages shall be due under this paragraph if the substitution is required due to death, incapacity, or resignation of Key Personnel.

5.4 County in its sole discretion may elect to waive, reduce or delay implementation of liquidated damages.

END OF APPENDIX F

APPENDIX G
BONDING REQUIREMENTS

1.01 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

- A. For all Agreements where the cost of construction exceeds \$25,000, the selected Contractor shall be required to provide both a construction performance bond and a construction labor and material payment bond, in accordance with Civil Code Section 3248 and Appendix G.1 – Construction Performance Bond and Appendix G.2 – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).
- B. For all Agreements where the estimated cost of construction exceeds \$6,500, the selected Contractor shall be required to provide a construction performance bond in accordance with Appendix G.1 – Construction Performance Bond. Contractor may not substitute cash in lieu of the required bond(s).
- C. If the Order specifies performance retention, then Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

APPENDIX G.1

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, Stanislaus County, a public agency of the State of California ("Owner") has awarded to **(Name of Contractor)** as Principal a Purchase Order dated the _____ day of _____, 20____ (the "Contract"), titled THE _____ PROJECT in the amount of _____, which Contract is by this reference made a part hereof, for the work described as follows:

(Describe Contract Work) _____

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
6. Whenever Principal shall be and declared by Owner in default under the Contract, Surety shall promptly remedy the default, or shall promptly:
 - 6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
 - 6.02 Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total

amount payable by Owner to the Principal under the Contract and any amendments thereto, less the amount paid by Owner to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Contract absent Owner's Consent.
8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
9. Surety may join in any proceedings brought under the Contract and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

APPENDIX G.2

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **Stanislaus County** ("Owner") has awarded to **(Name of Contractor)** _____ as Principal a Purchase Order dated the _____ day of _____, 20____ (the "Order"), titled THE _____ PROJECT located at _____ in the amount of \$ _____, which Order is by this reference made a part hereof, for the work described as follows:

(Describe Contract Work) _____.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Order to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE ORDER PRICE (\$ _____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code §3181, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Order, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code §3181, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Order, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Order, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Order; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20__.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

APPENDIX H

WARRANTY AND GUARANTY REQUIREMENTS

1.01 Warranty And Guaranty

- A. **General Representations and Warranties.** Consultant represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with Title 24, California Code of Regulations and the terms of Contract Documents. Consultant warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents, and that the design as developed will comply with the RFP Documents and the intended use of the Project. Consultant warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Consultant warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, RFP Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Consultant shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- B. **Extended Guaranties.** Any guaranty exceeding two years provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Consultant shall supply Owner with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.

APPENDIX H.1

GUARANTY

TO: The COUNTY OF STANISLAUS ("Owner"), for construction of the Distributed Antenna System at 200 E. Hackett Road, Ceres, California.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Consultant hereby grants to Owner for a period of two (2) years following the date of Final Acceptance of the Work completed, or such longer period specified in Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all design, engineering, professional services, labor, materials and equipment provided by Consultant and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Consultant shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Consultant of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Consultant shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within two (2) years after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Consultant shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Consultant shall respond within 24 hours after being notified in writing by Owner of any Work not in accordance with the requirements of the Contract or any defects in the Work. Consultant shall commence and prosecute with due diligence all work necessary to fulfill the terms of this Guaranty, and to complete the Work within a reasonable period of time. Consultant shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Consultant fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Consultant shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Consultant fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Consultant of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Consultant shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

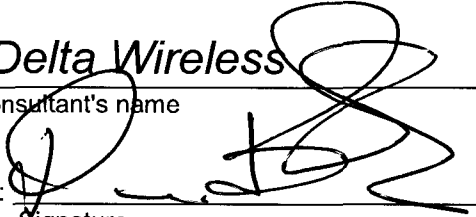
All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Consultant contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Consultant under the Contract Documents and at law with respect to Consultant's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Consultant under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Consultant.

Date: June 13, 2016

Delta Wireless

Consultant's name

By: 

Signature

David Naasz

Print Name

President

Title

1700 W. Fremont Street

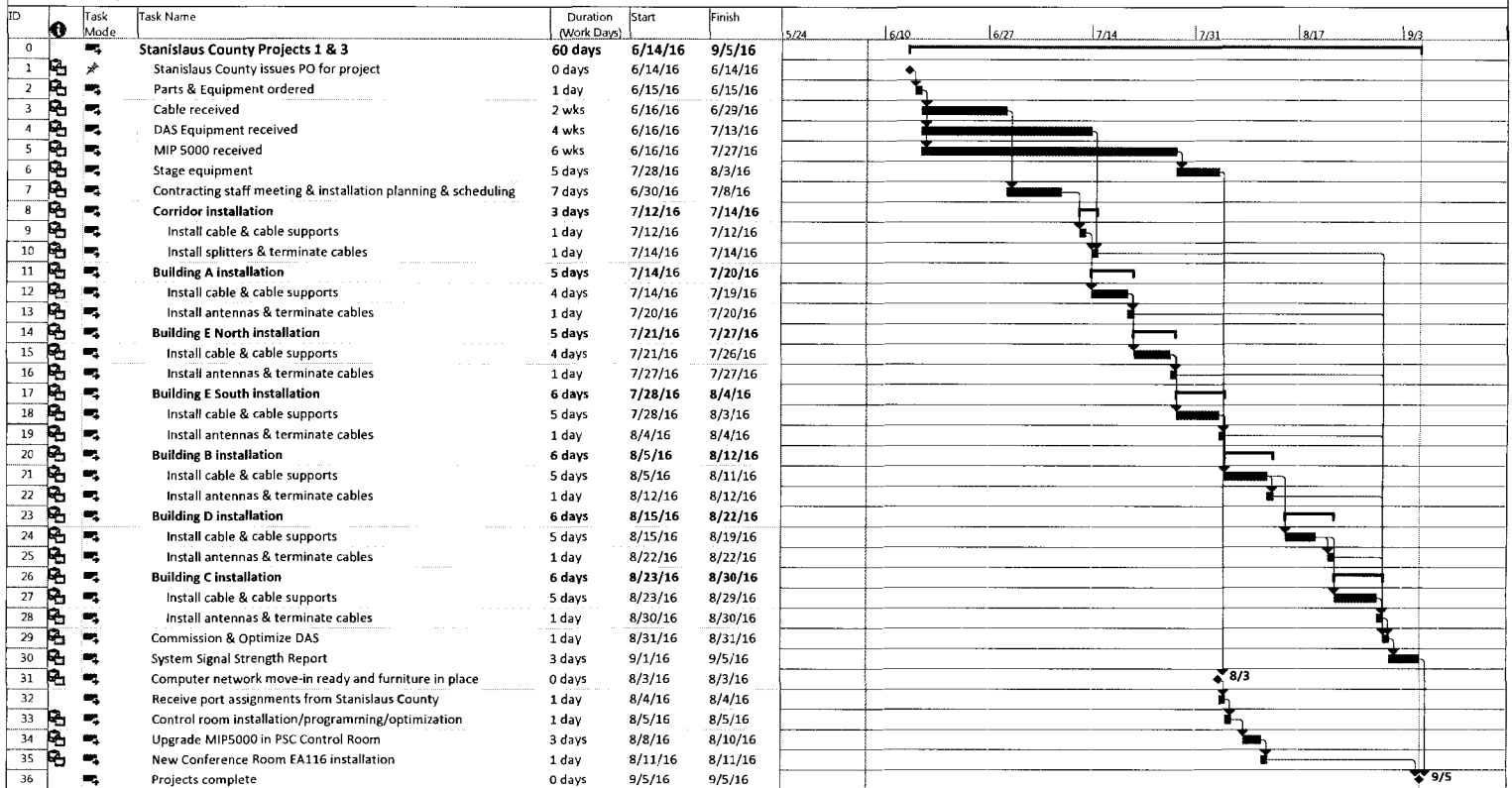
Street Address

Stockton, CA 95203

City, State, Zip code

APPENDIX I
PROJECT SCHEDULE

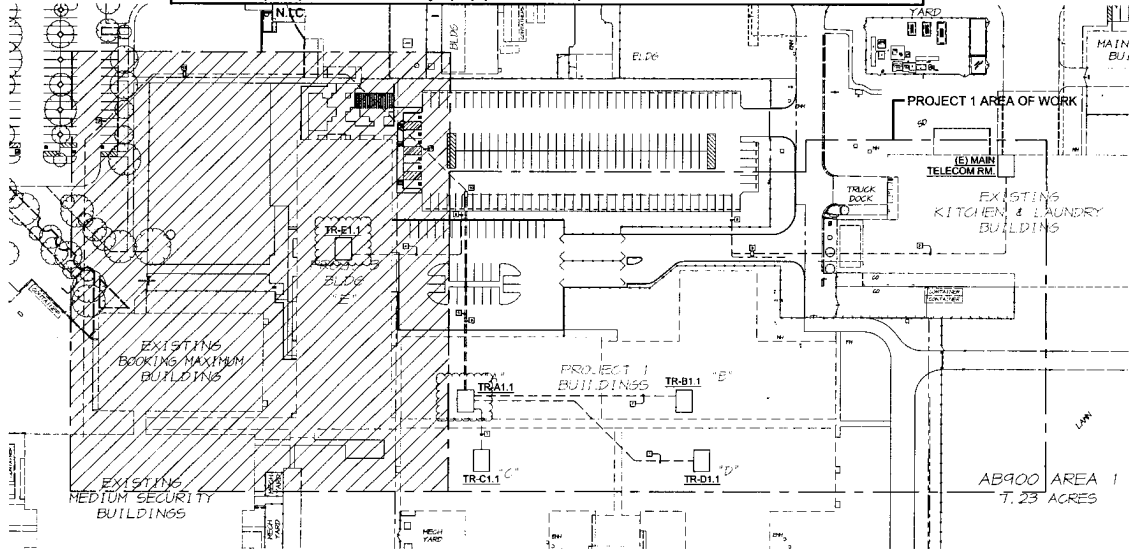
Delta Wireless Project 1 Gantt Chart



Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

APPENDIX J
TELECOM SITE LAYOUT

The design must include an emergency base station to be located at room EA116 in Project P3, including installation of coax from the Project P1 Building A low voltage room A105 rack layout TR-A1.1 to low voltage room EA114 rack layout TR-E1.1 in Building E Project P3 (Appendix G); this coax run will then need to be cross-connected to the future coax drop into Conference Room EA116 in Project P3 to achieve proper continuity (Appendix H).



TELECOMMUNICATIONS - SITE LAYOUT

ALFA, Inc.
 JAN 11 2011
 REVIEWED

Dewberry <small>California Public Safety Center</small>
BAHR <small>1111 Pine Street, Suite 100 San Francisco, CA 94109</small>
HENSEL PHELPS <small>7114 Pine Street, Suite 100 San Francisco, CA 94115</small>
CALIFORNIA STATE FIRE MARSHAL APPROVED <small>Approved by: [Signature]</small>
KEY PLAN
STANISLAUS COUNTY PUBLIC SAFETY CENTER JAIL EXPANSION PROJECT 1 - DP3 200 EAST HACKETT ROAD, CERES, CA 95308 100% CONSTRUCTION DOCUMENTS <small>REVISED 08/2010</small>

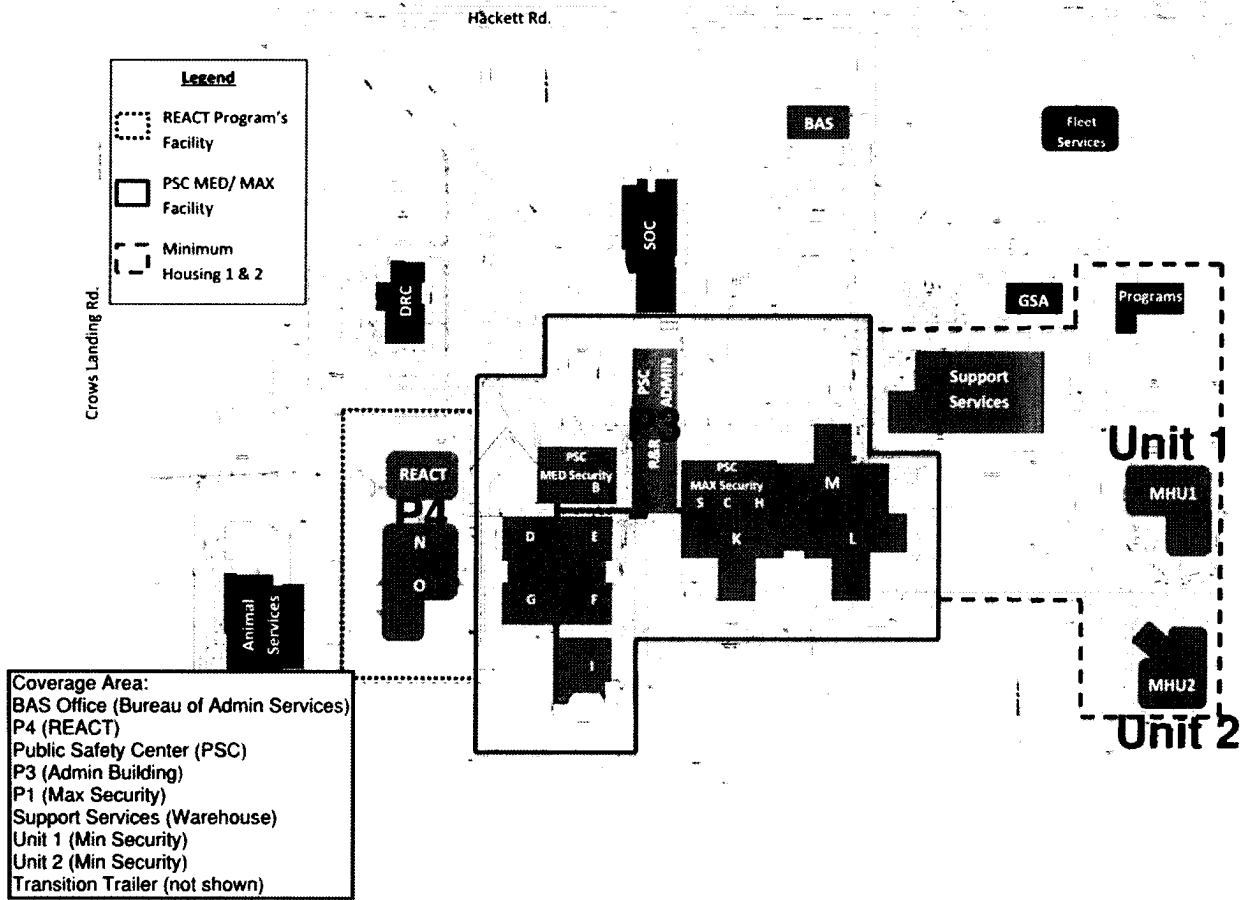
APPENDIX K
PROJECT ONE TELECOM

APPENDIX L
OVERALL SITE MAP

Appendix L - Public Safety Center Overall Site Map, including Project P1 and P3 currently under Construction.



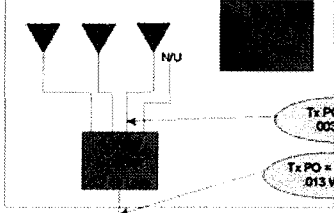
Addendum 1: Site Map



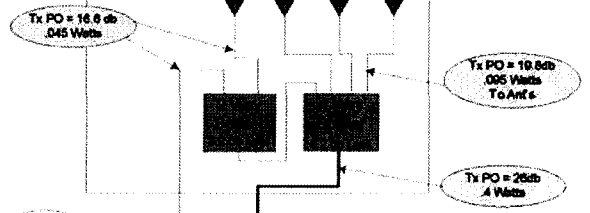
APPENDIX M
EXISTING RADIO SYSTEM



**Minimum Security Building
(Room BM118)**



**Services Building
(Room L103A)**

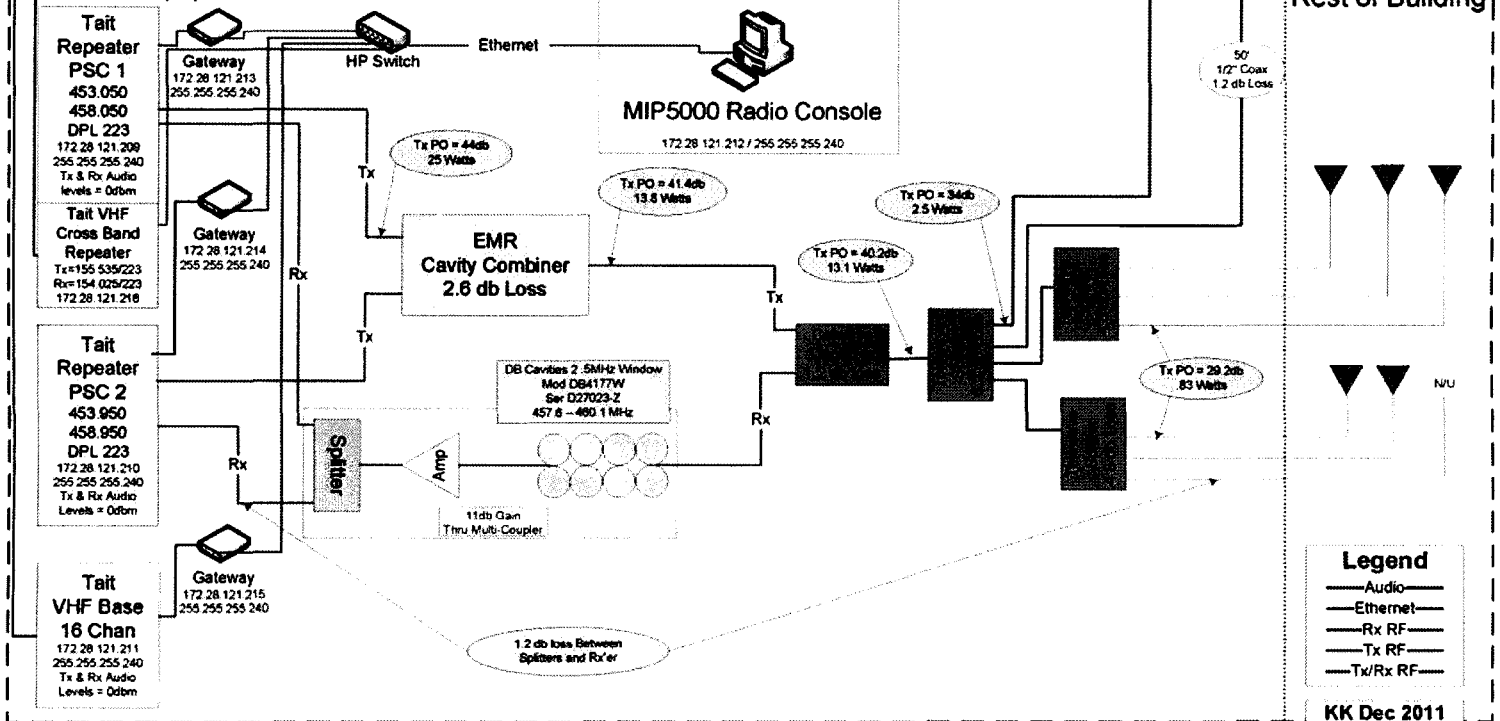


PSC Building

Equipment Rm B155

Control Room

Rest of Building



KK Dec 2011

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE COUNTY OF STANISLAUS AND DELTA WIRELESS, INC. FOR THE
EXPANSION OF THE FIRST RESPONDER DISTRIBUTED ANTENNA SYSTEM
IN PUBLIC SAFETY CENTER PROJECT THREE**

This Professional Services Agreement (the “**Agreement**”) is dated June 14, 2016 and is by and between the County of Stanislaus, a political subdivision of the State of California (“**County**”) and Delta Wireless, Inc., a California Corporation, licensed to do business in California (“**Consultant**”) relating to the First Responder DAS System Project at Public Safety Center Project Three.

Recitals

WHEREAS, County wishes to retain Consultant to perform expansion of the Public Safety Center First Responder Distributed Antenna System Services at Public Safety Center Project Three (“**Services**”);

WHEREAS, Consultant was selected by means of County’s consultant selection process, and represents that they possess all necessary training, licenses and permits to perform the Services required by County as set forth in this Agreement, and that their performance of such Services will conform to the highest standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

WHEREAS, Government Code sections 31000 and 53060 permit the County Board of Supervisors to enter into agreements for expert professional temporary services with individuals specially trained and experienced and competent to perform those services; and

WHEREAS, the services proposed in this Agreement are professional and temporary in nature.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

AGREEMENT

1. Definitions

1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

“Agreement”	This Agreement consists of this Agreement, together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, <u>Appendix A</u> (Services to be Provided by Consultant), <u>Appendix B</u> (Payments to Consultant), <u>Appendix C</u> (DAS System Timeline), <u>Appendix D</u> (Consultant Deliverables), <u>Appendix E</u> (Consultant Insurance), <u>Appendix F</u> (Consultant Staffing Plans), <u>Appendix G</u> (Bonding Requirements), <u>Appendix H</u> (Guaranty / Warranty Requirements), <u>Appendix I</u> (Project Schedule), <u>Appendix J</u> (Telecom Site Layout), <u>Appendix K</u> (Building E Telecom), <u>Appendix L</u> (Overall Site Map), <u>Appendix M</u> (PSC Existing Radio System) attached hereto.
“Consultant” / “Contractor”	Delta Wireless, Inc., a California corporation, licensed to do business in California, 1700 W. Fremont St., Stockton, CA 95203, 209-948-9611, <i>mokafuji@deltawireless.com</i>
“County”	County of Stanislaus
“Project”	The Stanislaus County First Responder DAS System Project in Ceres, California described in <u>Exhibit A to the RFQ/RFP</u> .

“Services”	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation general inspection, specialty construction inspection and materials testing services.
“Subconsultants”	Consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

2.1 All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude upon the completion of the Project.

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant may recover compensation for extended services as set forth in Appendix B.

3.3 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than Excusable Delays, Consultant shall apply such additional manpower and resources as necessary without Additional Services Compensation to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

4.1 County shall pay Consultant compensation according to the process established in Appendix B “Payments to Consultant”.

4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix D “Deliverables”, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County. County shall not be liable for, and Consultant shall not be entitled to, any payment for Services performed before this Agreement’s execution.

4.3 County will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amounts(s) upon County’s receipt of any requested documentation verifying the claimed amount(s) and County’s determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 calendar days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant’s transmittal of all deliverables to County required by Appendix A, Services to be Provided by Consultant and Appendix D, Consultant Deliverables.

4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated in Paragraph 6.1 below.

4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of their errors, omissions, breaches of this

Agreement, delays or other acts that caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Paragraph 21.3 below of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 calendar days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Stanislaus County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Paragraph 4.5, then County shall have satisfied its obligations under this Paragraph.

5. Maximum Costs

- 5.1 County's obligation hereunder shall not at any time exceed the amount approved by County's Board of Supervisors and approved by County for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its Supervisors, employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, and office equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Paragraph 17 below, County and Consultant shall direct all communications to each other as follows:

Stanislaus County

*Patricia Hill Thomas, Project Manager
thomasp@stancounty.com
1010 Tenth Street, Suite 6800
Modesto, CA 95354
(209) 525-4380*

Delta Wireless, Inc.

*Mitch Okafuji, Engineer
mokafuji@deltawireless.com
1700 W. Fremont St.
Stockton, CA, 95203*

- 6.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be those listed in its proposal dated April 15, 2016, and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel may in the future cease to be employed by Consultant and because of the termination of such employment no longer able to provide Services. However, Consultant agrees that replacement of any of the listed personnel during the Agreement period shall only be with other

professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with replacement of personnel shall be borne exclusively by Consultant.

- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge County for the cost of training or "bringing up to speed" replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix A, Services to be Provided by Consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Consultant, and within the times specified in Appendix C, the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the high standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.
- 7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of Consultant for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (including providing legal counsel reasonably acceptable to County at no cost to County), indemnify and hold harmless State of California, the State Public Works Board, the California Department of Corrections and Rehabilitation, the Board of State and Community Corrections, the County, and their respective Supervisors, officers, agents, departments, officials, representatives, employees, and volunteers (collectively "**Indemnitees**") from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description, at law or equity, that arise out of, pertain to, or relate to (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.
- 8.2 Consultant shall defend (including providing legal counsel reasonably acceptable to County at no cost to County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, suit, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert

consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

9. Liability of County

- 9.1 Except as provided in Appendix A, Services to be Provided by Consultant and Appendix E, Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3, 4, and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.
- 9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and shall exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, County employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County or Consultant may have under this Agreement or any applicable law. All rights and remedies of County or Consultant, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Consultant shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which Consultant perform the Services required by the terms of this Agreement. Consultant shall be fully liable for the acts and omissions of it their Subconsultants, employees and agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and Consultant. Consultant acknowledge that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall make its designated representative available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide County within the ten (10) calendar day period a written Cure Plan acceptable to County to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan); or

- c. Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) calendar days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide County within the ten (10) calendar day period a written Cure Plan acceptable to County to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan.)

13.3 In the event of termination by County as provided herein for cause:

- a. County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
- b. Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- c. Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement, including without limitation County's costs incurred in connection with finding a replacement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 15 below, and Consultant shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14. Termination of Agreement for Convenience

14.1 County may terminate performance of the Services under the Agreement in accordance with this Paragraph 14 in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("**Notice of Termination**") specifying the extent to which performance of the Services under the Agreement is terminated.

14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:

- a. Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - d. Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
 - f. Transfer title and possession of Consultant's and their Subconsultants' work product to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; County acknowledges that said documents were prepared for the purpose of the Project.
 - g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and
 - h. Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the certification County prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such three month period or authorized extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Paragraph 14.3 above, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and County fail, under Paragraph 14.4 above, to agree on the whole amount to be paid to Consultant because of termination of Services under this Paragraph 14.5, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:

- a. Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix B, Payments to Consultant. Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of Consultant's total costs of performing the Services.
- b. When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Consultant's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
- c. Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.

14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 14.5 above.

14.7 This Paragraph shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 14.2 above or costs authorized by County to settle claims from Subconsultants.

14.8 In arriving at amounts due Consultant under this Paragraph 14, there shall be deducted:

- a. All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- b. Any substantiated claim that County may have against Consultant in connection with this Agreement, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Paragraph 14, and not otherwise recovered by or credited to County.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies pursuant to this Agreement or at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.
- 15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant shall comply with the County's conflict of interest codes and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all private, confidential, or proprietary information disclosed by County to or discovered by Consultant in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant shall notify the County immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with the Services pursuant to this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Paragraph 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

17. Notices to the Parties

- 17.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.

17.2 Notice shall be sufficiently given for all purposes as follows:

- a. When personally delivered to the recipient, notice is effective on delivery.
- b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 17.

17.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.4 Addresses for the purpose of giving notice are set forth in Paragraph 6.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 17.

18. Record Keeping and Audit Requirements

18.1 Consultant shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. Consultant shall maintain a complete and current set of all books and records relating to the inspection and testing Services provided to the Project. County shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by Consultant relating to the work contemplated by this Contract. Within 90 calendar days after Final Completion, Contractor shall deliver to County those records necessary for County to perform a financial audit of the Project ("**Final Audit**").

18.2 Invoice and progress/final reports and all required audit reports shall be submitted to County in a timely manner.

18.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project, and shall be subject to examination and/or audit by County or designees, state government auditors or designees.

18.4 Make such books, records, supporting documentations, and other evidence available to County or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant agrees to include a similar right of County to audit records and interview staff in any subcontract related to the performance of this Contract.

18.5 Be advised that a partial source of financing for the agreement between County and Consultant for inspection and testing services for the Project is State Financing, and that County may not have funds to finance this Agreement independently of the State Financing. Consultant shall in all ways cooperate with County and BSCC in maintaining a good working relationship. Consultant shall cooperate as

instructed by the County in resolving any disputes arising under the BSCC Construction Agreement or the County's contract with the design-build contractor.

19. Subcontracting/Assignment/County Employees

19.1 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 19.1 shall confer no rights on any party and shall be null and void.

19.2 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

20. Other Obligations

20.1 Discrimination, Equal Employment Opportunity and Business Practices. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

20.2 Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on County premises. Consultant agrees that any violation of this prohibition by Consultant, their employees, agents or assigns shall be deemed a material breach of this Agreement.

20.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. Consultant acknowledge that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agree not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement. Consultant shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

20.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Consultant to penalties, to be determined by County's Assistant County Administrative Officer for General Services ("County ACAO"), including but not limited to: (a) termination of this Agreement; (b) disqualification of the Consultant from bidding on or being awarded a County contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the ACAO. To effectuate the provisions of this section, the ACAO shall have

the authority to examine Consultant's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Consultant under this Agreement or any other agreement between Consultant and County. Consultant shall report to the ACAO the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified Consultant that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Consultant shall provide County with a copy of their response to the complaint when filed.

21. Disputes

21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party, and a meeting between the Project Manager and principal of the Consultant shall then take place within five (5) calendar days of the date of the request.

21.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue their Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute. Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agree that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, County may terminate this Agreement for cause as provided herein.

21.3 In the event of claims exceeding **\$50,000**, as a precondition to commencing litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of JAMS, in Modesto, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Stanislaus County Superior Court from an approved list of JAMS qualified construction mediators. The parties may initially agree to engage in discovery prior to mediation. Should parties proceed with discovery, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et seq., and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

22. Agreement Made in California; Venue

22.1 This Agreement shall be deemed to have been executed in the City of Modesto, County of Stanislaus. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Stanislaus unless the parties agree otherwise in a written amendment to this Agreement.

22.2 The parties shall execute **four (4)** of this Agreement, each of which shall be deemed originals.

23. Compliance with Laws

23.1 Consultant shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

23.2 Consultant represent that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.

24. Miscellaneous

24.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

24.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 24.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.

24.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

24.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to in force in force any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

24.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

24.6 Consultant acknowledges that Consultant, and all Subconsultants hired by Consultant to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Subconsultants hired by Consultant to perform services under this Agreement are in compliance with the IRCA. In addition, Consultant agrees to indemnify, defend and hold harmless the County, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Consultant's employees, or the employees of any Subconsultant hired by Consultant, are not authorized to work in the United States for Consultant or its Subconsultant and/or any other claims based upon alleged IRCA violations committed by Consultant or Consultant's Subconsultant(s).

25. Entire Agreement; Modifications

25.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any

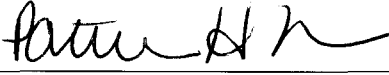
written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, written or oral, express or implied, which relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

- 25.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 25.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of County, Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 25.4 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require their Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 25.5 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 25.6 Changes in the Services made pursuant to this Paragraph 25 and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 25.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

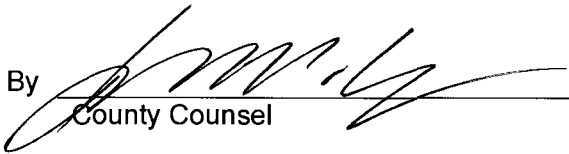
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

RECOMMENDED AND APPROVED
AS TO CONTENT:

COUNTY OF STANISLAUS

By 
Patricia Hill Thomas, Chief Operations
Officer

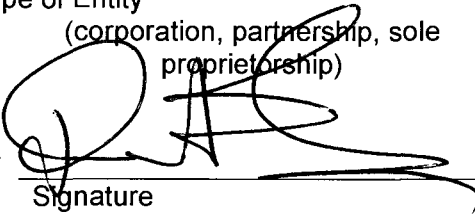
APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By 
County Counsel

DELTA WIRELESS, INC.

corporation

Type of Entity
(corporation, partnership, sole
proprietorship)

By 
Signature

David Naasz

Typed Name

President

Title of Individual Executing
Document on behalf of Firm

APPENDIX A

EXPANSION OF THE PUBLIC SAFETY CENTER FIRST RESPONDER DISTRIBUTED ANTENNA SYSTEM

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as “**Consultant**” and the **County of Stanislaus**, hereinafter referred to as “**County**” providing for professional DAS Services.

1. GENERAL REQUIREMENTS OF CONSULTANT'S SERVICES
 - 1.1 Evaluate upgrade and expansion of the existing DAS system.
 - 1.2 Prepare stamped designs for the implementation of the expansion of the DAS system into Projects.
 - 1.3 Recommend appropriate products necessary for the expansion of the DAS system.
 - 1.4 Attend Weekly Quality Control (QC)/Quality Assurance (QA) as needed;
 - 1.5 Contractor shall coordinate its work with the work of other separate contractors, Owner, and utility owners. Contractor shall hold coordination meetings with other contractors, Owner and its representatives, and utility owners as required.
 - 1.6 Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents;
 - 1.7 Note that the Consultant is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value;
 - 1.8 Owner inspections are for the sole benefit of the Owner and do not:
 - a. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - b. Constitute or imply acceptance;
 - c. Affect the continuing rights of the Owner after acceptance of the completed work to pursue its rights and remedies relating to latent defects, gross mistakes, fraud or the Owner's rights under any warranty or guarantee; or
 - d. Relieve the Contractor of responsibility for providing adequate quality control measures.
 - 1.9 The presence or absence of an Owner inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Owner's written authorization.
 - 1.10 Consultant shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections as may be required by the Owner.
 - 1.11 Perform all necessary coring of concrete walls for routing of wire.
 - 1.12 Provide and install all needed Fire sealants, sleeves to maintain the rating of the wall system.

2 COUNTY RESPONSIBILITIES

County shall provide the following services and data to Consultant:

2.1 Payments

Issue job progress payments to Consultant in a timely manner.

2.2 Site Access

Provide site access to Consultant as requested through CM and IOR.

2.3 Contract Documents

County shall furnish Consultant with the construction documents prepared by Dewberry for the current Projects under construction for reference only.

2.4 Designated Representative

County shall designate a representative authorized to act in County's behalf with respect to the Project. County, or such authorized representative, shall examine documents submitted by Consultant and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of Consultant Services.

2.5 Legal, Accounting and Insurance Services

County shall furnish legal, accounting and insurance counseling services necessary to protect County's interest in the Project, including such auditing services as County may require to verify the Project Applications for Payment. County shall supply such services to protect solely its interests.

2.6 County Work

County reserves the right to perform work related to the Project with County's own forces, and to award contracts in connection with the Project which are not part of Consultant's responsibilities under the Agreement. Consultant shall notify County if any such independent action will in any way compromise Consultant's ability to meet Consultant's responsibilities under the Agreement.

2.7 Communications

County shall use its best efforts to advise Consultant of any fault or defect in Consultant's Services, the Project, or nonconformity with the Contract Documents, but any failure to do so shall not prejudice either parties' rights and duties under the Agreement.

END OF APPENDIX A

APPENDIX B

PAYMENTS FOR Consultant

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as "Consultant" and the County of Stanislaus, hereinafter referred to as "County" providing for the First Responder DAS System Project.

1. The maximum payment to Consultant under this Agreement for the Project known as the First Responder DAS System Project shall be for the lump sum amount not to exceed \$56,873.66.

2. METHODS OF PAYMENT FOR CONSULTANT'S SERVICES AND EXPENSES

2.1. PRICING PROPOSAL. The entire Scope of Work for cost by Consultant shall be a fixed fee lump sum amount based on Respondent's estimate of the necessary time, materials, and equipment required to provide the DAS Services. Respondents shall submit a pricing proposal, detailed cost breakdown by line item the menu of services to be provided for the Projects

2.2 EXTENDED SERVICES. Proposer shall be required to extend services at the same rate for up to six months beyond the Project completion date should County seek extended services. The extended services pricing will remain in force for up to six additional months (September 2017) beyond the base services provided through March 2017.

2.3 ADDITIONAL SERVICES. The County may also elect to contract for *Additional Services* under this Agreement for procurement of the selected DAS system or the expansion into Project 4. The proposal shall include Billing Rates for potential additional services/tasks of various key personnel. The Billing Rates shall remain constant throughout this Agreement, including for additional services, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason for the duration of the design-build construction of the Projects. Consultant shall be responsible for all portions of the Professional Services Agreement as included in Exhibit D.

3. TIMES OF PAYMENTS.

3.1 Consultant shall be paid according to actual percentage of completion of basic Services as specified in paragraph 2.1, above.

3.2 Consultant shall submit monthly statements for Basic and any Additional Services rendered and for Reimbursable Expenses incurred in a format acceptable to the County. The statements shall be based on Consultant's estimate of the proportion of completion of its services set forth above in Section 2.1, utilizing the Consultant's required work schedule organized by task. County shall promptly review Consultant monthly statement, and provided it is acceptable, shall make prompt payment thereon.

4. DEFINITIONS.

4.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement, provided that the Additional Services are not due to the errors and/or omissions of Consultant.

4.2 The "Billing Rates" are the hourly rates indicated on Exhibit 1 to this Appendix B attached hereto.

4.3 "Reimbursable Expenses Related to Additional Services" shall be limited to the specific expenses identified below while performing Additional Services. All other expenses are not

reimbursable and are deemed included in the Billing Rate. The Reimbursable Allowance is included in the lump sum of this Agreement.

4.3.1. Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by County to travel to a location more than 50 miles from either the project site, the Consultant's office(s), or County's office, incurred performing Additional Services. Travel expenses shall be limited to \$0.25/mile for travel by automobile, and the actual expense for travel by other means. Any air travel shall be by common carrier at actual fare charged for economy or coach class. Lodging and meal expenses shall be reimbursed at the current rates applicable to County employees.

4.3.2. Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

4.3.3. Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.

4.3.4. Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Agreement Documents, if any, incurred performing Additional Services.

4.3.5. Field Office Facilities. Providing and maintaining field office facilities, including furnishings and utilities incurred performing Additional Services.

4.3.6. Subconsultants. For Additional Services of subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore for general and administrative expenses.

4.3.7. Reimbursable Expenses. Reimbursable Expenses must be reasonable, incurred independently of expenses incurred on base scope contract work, and must be recorded separately of the base scope contract work with adequate supporting documentation; otherwise it is not recoverable.

END OF APPENDIX B

EXHIBIT 1 TO APPENDIX B-

BILLING RATES FOR CONSULTANT SERVICES

This is an exhibit attached to, and made a part of, the Professional Services Agreement dated June 14, 2016 by and between Delta Wireless, Inc., hereinafter referred to as "**Consultant**" and the **County of Stanislaus**, hereinafter referred to as "**County**" providing for professional in connection with the County's First Responder DAS System Project.

1. **BILLING RATES** -- The Billing Rates for Additional Services beyond the scope of Consultant's Pricing Proposal are the following unit rates:

Name	Hourly Rate
Engineer	\$130
Project Manager	\$115
Technician	\$115
Installer	\$98

2. **REIMBURSABLE EXPENSES** – Are included in the lump sum of this Agreement unless incurred in connection with Extended Services and tracked as required by the Agreement.

APPENDIX C

FIRST RESPONDER DAS PROJECT TIMELINE

This preliminary Milestone Schedule is an Appendix attached to, made a part of, and incorporated by reference to the Agreement dated June 14, 2016 between the County of Stanislaus (the “**County**”), and Delta Wireless, Inc., a California corporation, licensed to do business in California (“**Consultant**”) providing for professional services. Consultant understands that the dates within this preliminary Milestone Schedule may change as the services of the Project are performed..

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issuance of RFQ/RFP	County	March 2, 2016
Submittal of Written Questions Deadline	Potential Respondents	March 25, 2016
Addendum response to Distribution List	County	March 30, 2016
Proposals Due	Potential Respondents	April 6, 2016
Interviews	County	April 15, 2016
Respondent recommendation	County	June 3, 2016
Selected Respondent approval	Board	June 14, 2016
Commencement of Services Under PSA	County/Selected Respondent	June 14, 2016
Completion of all Services	Selected Respondent	August 26, 2016

County reserves the right to modify this schedule at any time at its sole discretion.

END OF APPENDIX C

APPENDIX D

DELIVERABLES FOR CONSULTANT'S SERVICES

This is an Appendix attached to, and made a part of, the Agreement dated June 14, 2016 by and between Delta Wireless, Inc., a California corporation, hereinafter referred to as "**Consultant**" and the **County of Stanislaus**, hereinafter referred to as "**County**" providing for First Responder DAS System Project.

Consultant's deliverables under the Agreement are enunciated throughout the RFP and include but are not limited to the following:

1. **PROJECT DELIVERABLES**

1.1 Consultant's task lists for County's coordination of its activities.

2. **DAS Services.** The deliverables considered part of DAS Services are defined in this Appendix D and include, but are not limited to, the following deliverables:

- 2.1 The consultant will maintain a monthly status report of the budget quantities and costs, quantities and cost expended through previous report period, quantities and cost this report period, and total quantities and cost to date. The status report will be submitted with the monthly billing.
- 2.2 Stamped designs for the expansion of the DAS system appropriate for Delta Wireless, Inc. to use to procure necessary equipment and to expand the system into the Project.
- 2.3 Recommendation of appropriate products for the DAS system.
- 2.4 Maintain accurate and timely reports.
- 2.5 Attend Weekly QA/QC meetings as needed.
- 2.6 Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents.
- 2.7 Maintain complete inspection records and make them available to the Owner, Inspector of Record and Consultant.

END OF APPENDIX D

APPENDIX E

CONSULTANT INSURANCE REQUIREMENTS

This is an Appendix attached to, made a part of, and incorporated by reference to the Agreement dated June 14, 2016 between the County of Stanislaus (the “**County**”), and Delta Wireless, Inc., a California corporation, licensed to do business in California (“**Consultant**”) providing for professional services.

1. Consultant’s Duty to Show Proof of Insurance. Consultant, in order to protect County and State and their board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant’s acts, errors, or omissions in connection with the performance of Consultant’s obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the County’s authorized insurance representative, Insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or County as an additional insured.

1.1 Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant’s performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

1.2 Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

1.3 Workers’ Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers’ compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers’ compensation for all of the Subconsultants’ employees, unless the Subconsultants’ employees are covered by the insurance

afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

1.4 Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

1.5 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.

1.6 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **Insurance terms and conditions:**

2.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

2.2 Stanislaus County as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the County of Stanislaus, its officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

2.3 State of California as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the Department of Corrections and Rehabilitation of the State of California; the Board of State and Community Corrections, an entity of the state government of the State of California; the State Public Works Board of the State of California, and their Officers, Agents, and Employees shall be named as additional

insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

2.4 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.

2.5 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The County will not accept such coverage unless the County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

2.6 All insurance afforded by Consultant pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the County, its officers, directors, agents, employees and volunteers; the Department of Corrections and Rehabilitation of the State of California; the Board of State and Community Corrections, an entity of the state government of the State of California; the State Public Works Board of the State of California, and their officers, agents, and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by Consultant. A waiver of right of recovery (waiver of subrogation) is only required when Consultant's personnel deliver services or performs service for the County while on County property.

2.7 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

2.8 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Consultant, County shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse County for the premiums and any associated costs, Consultant agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

2.9 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

2.10 County may (but is under no obligation to) secure wrap-up insurance, in which case Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Consultant's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by Consultant and its subconsultants by virtue of the County's obtaining wrap-up insurance, and the exclusion of this project from coverage of Consultant and subconsultants policies. Consultant and its subconsultants shall afford County

access to their books and records and cooperate with County in verifying the amount of savings realized.

END OF APPENDIX E

APPENDIX F

STAFFING PLAN FOR CONSULTANT'S SERVICES

This is an Appendix attached to, and made a part of and incorporated by reference to the Professional Services Agreement dated June 14, 2016, by and between Delta Wireless, Inc., hereinafter referred to as "Consultant" and the COUNTY OF STANISLAUS, hereinafter referred to as "County" providing for professional services for the First Responder DAS System Project.

ARTICLE 1 – DAS SERVICES

1.1 Consultant's Staffing Plan includes but is not limited to the following:

Name	Responsibility
Mitch Okafuji	Engineering
David Doty	Project Manager
Jerry Hignight	Project Manager
Art Weaver	Technician
Jim Rinehart	Technical Supervisor
Randy Costa	Technician
George Gonzalez	Technician
Karl Schweitzer	Technician
Steve Dickerson	Technician
Mike Turner	Technician
Thor Hang	Technician
Steve Landron	Technician
Daniel Mckee	Installer
Joe Goen	Installer
Andrew Martinez	Installer
Inness Braxton	Installer

ARTICLE 2 – KEY PERSONNEL AND SUBCONSULTANTS

2.1 Consultant's Key Personnel are identified in the Agreement Form.

ARTICLE 3 – CHANGES TO KEY PERSONNEL AND ADDITIONS TO STAFFING PLAN

3.1 For Key Personnel, Consultant's shall not remove, reassign or make changes to any of the Key Personnel or their assignment durations without County's prior written approval.

3.2 For personnel initially identified in the Staffing Plan by position only, Consultant's shall submit for review, comment and approval, resumes of each person proposed to fill each position, and/or replacements to personnel once approved, showing such person's experience and qualifications to fill such position. Such added personnel ("Added Personnel") shall be added to Consultant's staff as necessary, but subject to approval by County.

3.3 Unless directed to reduce staff by County, in the event that any Key Personnel or Added Personnel, for any reason thereafter ceases to fill that position, within ten (10) days thereof, Consultant's shall propose a replacement person for County's approval pursuant to the following process:

3.4 Consultant's shall prepare and submit to County for its review, comment and approval, a proposal listing all personnel that Consultant's proposes to assign to the Project as replacement, and the proposed duration of each such assignment.

3.5 Within fifteen (15) days following Consultant's submittal of the proposal and resumes, County shall either give its written approval of such submission or provide comments. In the event County approval is withheld, Consultant's, in response to such comments, shall promptly, but no later than five (5) business days after receipt of County's comment, make all necessary and appropriate changes to the proposal (including changes in proposed staff) and resubmit it to County for its approval, and such process shall continue until County approves Consultant's proposed staffing. Such approvals shall not be unreasonably withheld.

3.6 For replacement of Key Personnel, Consultant's shall be subject to liquidated damages as described below, and also may not receive reimbursement for substitute personnel in amounts greater than would have been paid for the initial Key Personnel.

3.7 County may, in its sole discretion, direct Consultant to add to or reduce Consultant's staff to meet changing Project requirements.

ARTICLE 4 – UNSATISFACTORY PERSONNEL

4.1 Consultant shall remove any person employed by Consultant or any subconsultant whom County may deem incompetent, improper or a hindrance to the progress of any Work or Services on the Project, and in the event of any such removal, Consultant shall immediately replace (or cause to be replaced) such person with a properly qualified and experienced replacement and, in the case of removal of any person holding any position described in the Staffing Plan, Consultant shall propose properly experienced and qualified replacement personnel for County approval, pursuant to the same process as is described in Article 3 above.

ARTICLE 5 – LIQUIDATED DAMAGES FOR KEY PERSONNEL

5.1 Consultant and County agree that the personal services of the Key Personnel is a material term of the Agreement, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the County, the measure of which would be impractical or extremely difficult to fix, and in lieu of which County and Consultant have agreed to liquidated damages as described below.

5.2 County may assess and Consultant shall accept liquidated damages in the amount of three (3) times the gross monthly salary for unauthorized substitutions of any Key Personnel.

5.3 No liquidated damages shall be due under this paragraph if the substitution is required due to death, incapacity, or resignation of Key Personnel.

5.4 County in its sole discretion may elect to waive, reduce or delay implementation of liquidated damages.

END OF APPENDIX F

APPENDIX G
BONDING REQUIREMENTS

1.01 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

- A. For all Agreements where the cost of construction exceeds \$25,000, the selected Contractor shall be required to provide both a construction performance bond and a construction labor and material payment bond, in accordance with Civil Code Section 3248 and Appendix G.1 – Construction Performance Bond and Appendix G.2 – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).
- B. For all Agreements where the estimated cost of construction exceeds \$6,500, the selected Contractor shall be required to provide a construction performance bond in accordance with Appendix G.1 – Construction Performance Bond. Contractor may not substitute cash in lieu of the required bond(s).
- C. If the Order specifies performance retention, then Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

APPENDIX G.1

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, Stanislaus County, a public agency of the State of California ("Owner") has awarded to (Name of Contractor) as Principal a Purchase Order dated the _____ day of _____, 20__ (the "Contract"), titled THE _____ PROJECT in the amount of _____, which Contract is by this reference made a part hereof, for the work described as follows:

(Describe Contract Work) _____

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

5. No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

6. Whenever Principal shall be and declared by Owner in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

6.02 Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total

amount payable by Owner to the Principal under the Contract and any amendments thereto, less the amount paid by Owner to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Contract absent Owner's Consent.
8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
9. Surety may join in any proceedings brought under the Contract and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

APPENDIX G.2

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **Stanislaus County** ("Owner") has awarded to **(Name of Contractor)** _____ as Principal a Purchase Order dated the _____ day of _____, 20____ (the "Order"), titled THE _____ PROJECT located at _____ in the amount of \$ _____, which Order is by this reference made a part hereof, for the work described as follows:

(Describe Contract Work) _____

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Order to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE ORDER PRICE (\$ _____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code §3181, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Order, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code §3181, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Order, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Order, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Order; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

APPENDIX H

WARRANTY AND GUARANTY REQUIREMENTS

1.01 Warranty And Guaranty

- A. General Representations and Warranties. Consultant represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with Title 24, California Code of Regulations and the terms of Contract Documents. Consultant warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents, and that the design as developed will comply with the RFP Documents and the intended use of the Project. Consultant warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Consultant warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, RFP Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Consultant shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- B. Extended Guaranties. Any guaranty exceeding two years provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Consultant shall supply Owner with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.

APPENDIX H.1

GUARANTY

TO: The COUNTY OF STANISLAUS ("Owner"), for construction of the Distributed Antenna System at 200 E. Hackett Road, Ceres, California.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Consultant hereby grants to Owner for a period of two (2) years following the date of Final Acceptance of the Work completed, or such longer period specified in Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all design, engineering, professional services, labor, materials and equipment provided by Consultant and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Consultant shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Consultant of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Consultant shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within two (2) years after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Consultant shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Consultant shall respond within 24 hours after being notified in writing by Owner of any Work not in accordance with the requirements of the Contract or any defects in the Work. Consultant shall commence and prosecute with due diligence all work necessary to fulfill the terms of this Guaranty, and to complete the Work within a reasonable period of time. Consultant shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Consultant fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Consultant shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Consultant fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Consultant of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Consultant shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Consultant contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Consultant under the Contract Documents and at law with respect to Consultant's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Consultant under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Consultant.

Date: June 13, 2016

Delta Wireless

Consultant's name

By: 
Signature

David Naasz

Print Name

President

Title

1700 W. Fremont Street

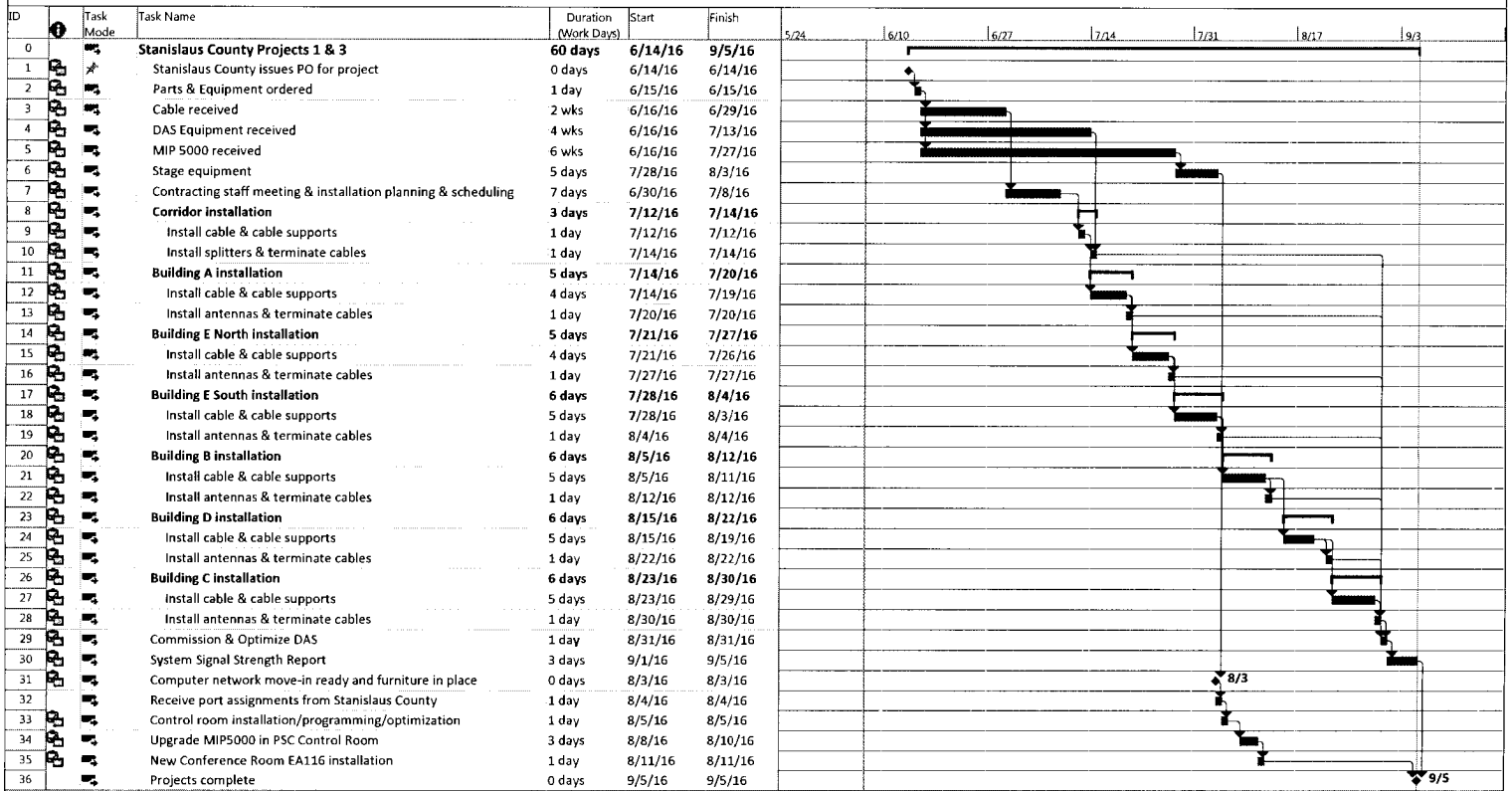
Street Address

Stockton, CA 95203

City, State, Zip code

APPENDIX I
PROJECT SCHEDULE

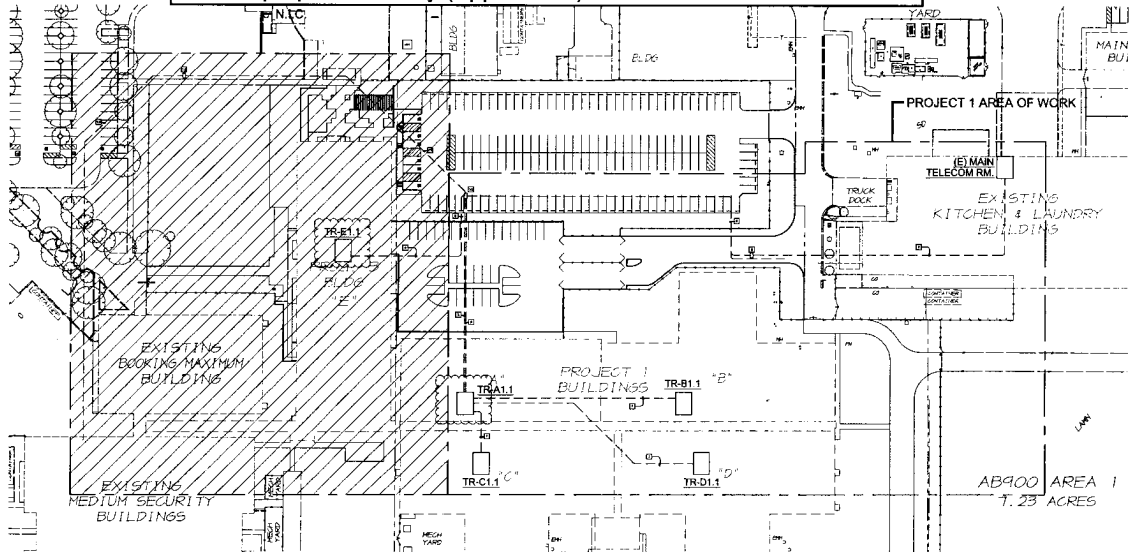
Delta Wireless Project 1 Gantt Chart



Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

APPENDIX J
TELECOM SITE LAYOUT

The design must include an emergency base station to be located at room EA116 in Project P3, including installation of coax from the Project P1 Building A low voltage room A105 rack layout TR-A1.1 to low voltage room EA114 rack layout TR-E1.1 in Building E Project P3 (Appendix G); this coax run will then need to be cross-connected to the future coax drop into Conference Room EA116 in Project P3 to achieve proper continuity (Appendix H).



TELECOMMUNICATIONS - SITE LAYOUT

4LEAF, Inc
 REVIEWER

Dewberry
 9000 De Soto Ave., Suite 200
 Irvine, CA 92618
 (949) 261-2000

BAHR
 1110 The Plaza, Suite A
 San Diego, CA 92108
 (619) 594-1000

HENSEL PHELPS
 Fire, Auto, Package
 200 West 10th Street, Suite 100
 San Diego, CA 92101
 (619) 594-1000

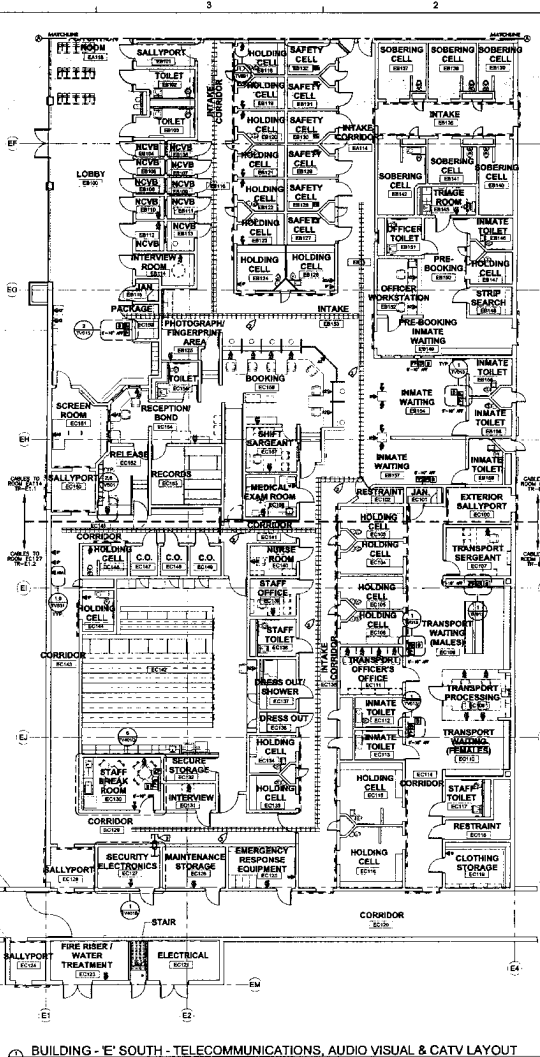
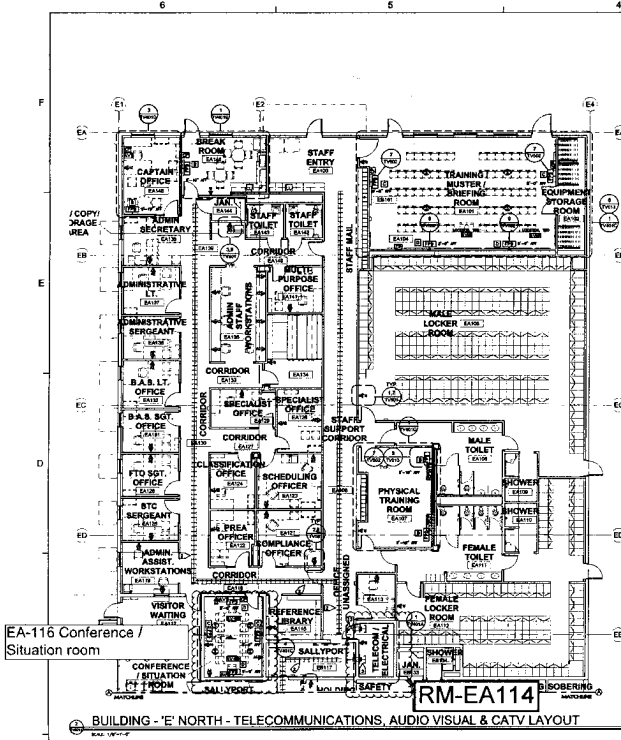
4LEAF, Inc
 4000 La Jolla Village Drive, Suite 100
 San Diego, CA 92122
 (619) 594-1000

CALIFORNIA STATE FIRE MARSHAL
 APPROVED

KEY PLAN

STANISLAUS COUNTY PUBLIC SAFETY CENTER
 JAIL EXPANSION
 PROJECT 1 - DP3
 200 EAST HACKETT ROAD, CERES, CA 95308
 100% CONSTRUCTION DOCUMENTS
 SHEET NO. 1000-1000-1000-1000

APPENDIX K
BUILDING E TELECOM



TELECOM/AUDIO/VISUAL & CATV LEGEND

SYMBOL	DESCRIPTION
(Symbol)	100 MHz
(Symbol)	200 MHz
(Symbol)	400 MHz
(Symbol)	800 MHz
(Symbol)	1.6 GHz
(Symbol)	2.4 GHz
(Symbol)	5.8 GHz
(Symbol)	10 GHz
(Symbol)	15 GHz
(Symbol)	20 GHz
(Symbol)	30 GHz
(Symbol)	40 GHz
(Symbol)	50 GHz
(Symbol)	60 GHz
(Symbol)	70 GHz
(Symbol)	80 GHz
(Symbol)	90 GHz
(Symbol)	100 GHz
(Symbol)	110 GHz
(Symbol)	120 GHz
(Symbol)	130 GHz
(Symbol)	140 GHz
(Symbol)	150 GHz
(Symbol)	160 GHz
(Symbol)	170 GHz
(Symbol)	180 GHz
(Symbol)	190 GHz
(Symbol)	200 GHz

FLAG NOTES

1. SEE SHEET FOR FLAG LOCATIONS.

2. SEE SHEET FOR FLAG LOCATIONS.

3. SEE SHEET FOR FLAG LOCATIONS.

4. SEE SHEET FOR FLAG LOCATIONS.

5. SEE SHEET FOR FLAG LOCATIONS.

6. SEE SHEET FOR FLAG LOCATIONS.

7. SEE SHEET FOR FLAG LOCATIONS.

8. SEE SHEET FOR FLAG LOCATIONS.

9. SEE SHEET FOR FLAG LOCATIONS.

10. SEE SHEET FOR FLAG LOCATIONS.

The design must include an emergency base station to be located at room EA116 in Project P3, including installation of coax from the Project P1 Building A low voltage room A105 rack layout TR-A1.1 to low voltage room EA114 rack layout TR-E1.1 in Building E Project P3 (Appendix G); this coax run will then need to be cross-connected to the future coax drop into Conference Room EA116 in Project P3 to achieve proper continuity (Appendix H).

Dewberry

BAHR

HENSEL PHELPS

KEY PLAN

STANISLAUS COUNTY PUBLIC SAFETY CENTER EXPANSION JAIL EXPANSION - PROJECT 13 - DP4 200 EAST HACKETT ROAD, CERES, CA 95338

100% CONSTRUCTION DOCUMENTS

BUILDING 'E' - TELECOM, AV & CATV LAYOUT

TV-201E

DATE: 11/14/2015

DRAWN BY: [Name]

CHECKED BY: [Name]

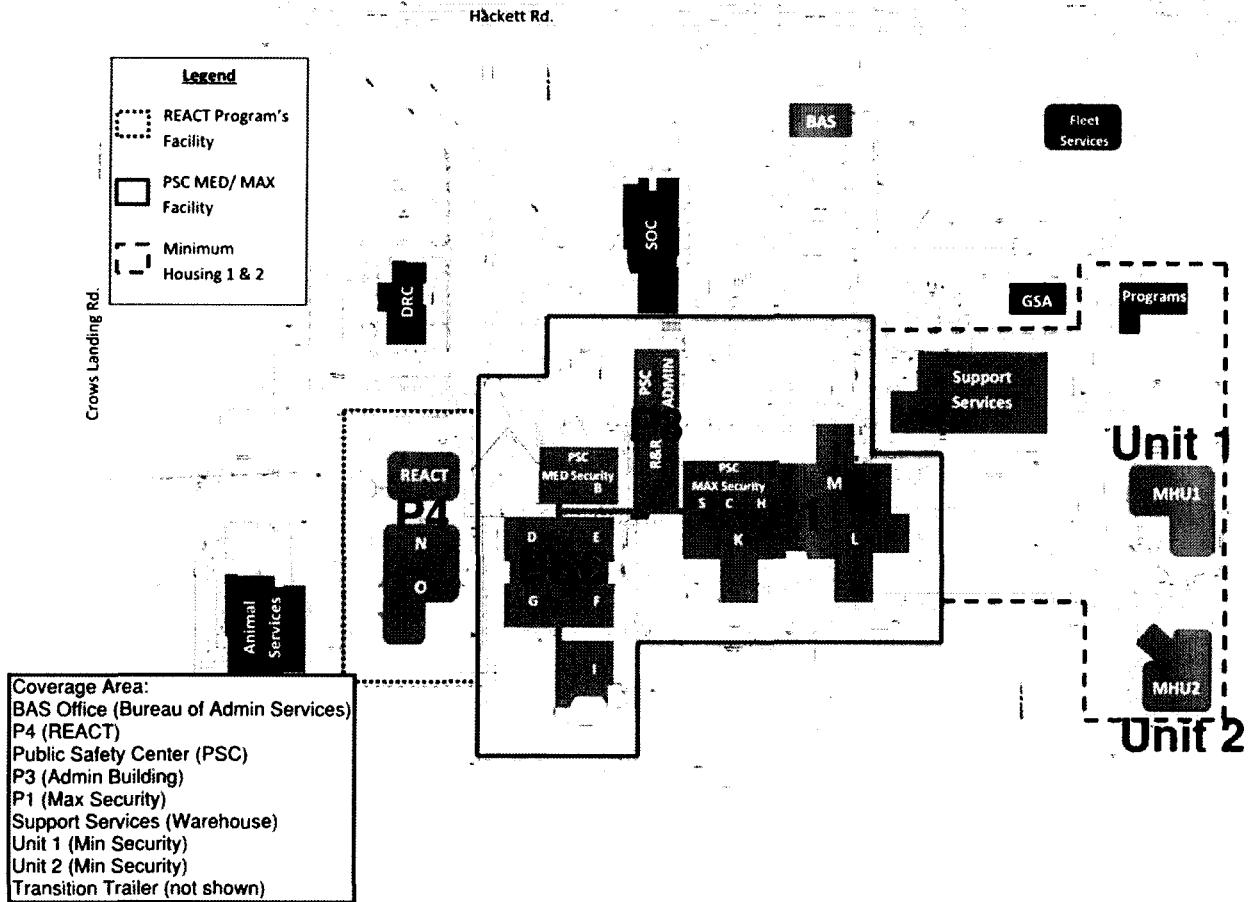
DATE: 11/14/2015

APPENDIX L
OVERALL SITE MAP

Appendix L - Public Safety Center Overall Site Map, including Project P1 and P3 currently under Construction.



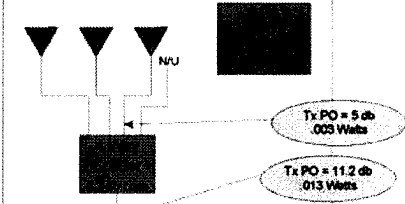
Addendum 1: Site Map



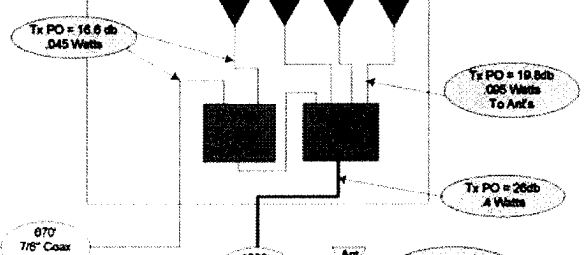
APPENDIX M
EXISTING RADIO SYSTEM



**Minimum Security Building
(Room BM118)**



**Services Building
(Room L163A)**

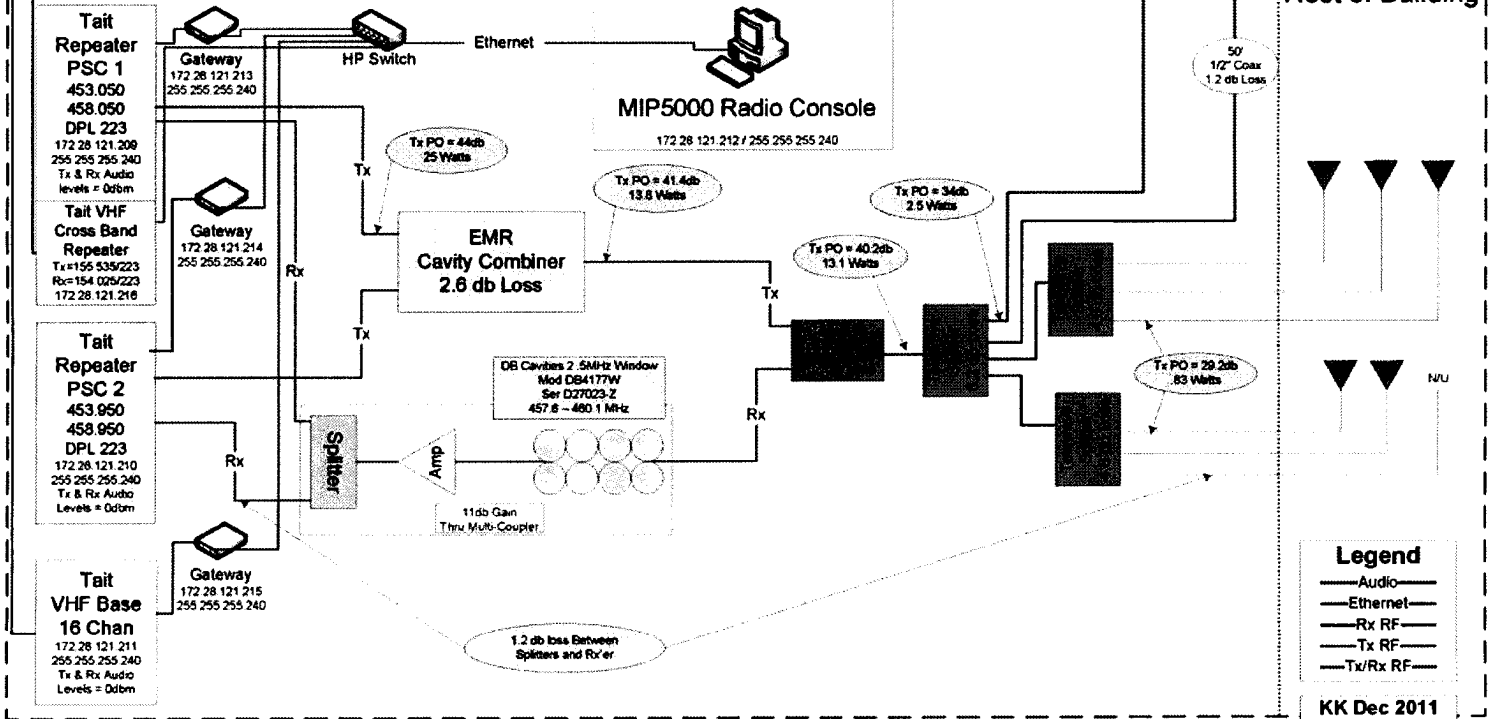


PSC Building

Equipment Rm B155

Control Room

Rest of Building



Legend

- Audio —
- Ethernet —
- Rx RF —
- Tx RF —
- Tx/Rx RF —

KK Dec 2011