

**FIFTH AMENDMENT TO  
MAINTENANCE AGREEMENT**

This **Fifth Amendment** is made to the Agreement – San Bernardino County Contract 18-874 - between the **County of San Bernardino (“Customer”)** and **NEC Corporation of America (“NEC”)** effective dated December 4, 2018 (the “Agreement”). The following modified and added terms and conditions are made a part of the Agreement effective when signed by NEC and Customer, together known as (“Parties”).

WHEREAS NEC and Customer are parties to that NEC Maintenance Agreement – San Bernardino County Contract 18-874 with an effective date of December 4, 2018 (“Agreement”); and

WHEREAS the Amended Agreement term expired on October 20, 2023 (“Termination Date”); and

WHEREAS NEC and Customer now wish to extend the term of the Agreement from the Agreement Termination Date through October 19, 2024; and

NOW, THEREFORE, in consideration of the mutual covenants and understanding contained herein, the Parties hereby agree to amend the Agreement as follows:

1. Section 2, “Term of Agreement” is amended as follows: This Agreement shall be effective from October 20, 2023 and shall continue for a period of one (1) year (“Renewal Term”). After the Renewal Term, the parties may mutually agree, in writing, to renew the Agreement thereafter for additional twelve (12) month terms, upon the same terms and conditions contained herein (“Renewal Term(s)”), except NEC may adjust its service rates to conform to NEC’s prevailing local service rates for the renewal term. After the Initial Term, either party may terminate this AGREEMENT at any time upon ninety (90) days written notice.
2. Section 5.1, “Service Limitations” is deleted in its entirety and replaced with the following: “Charges for maintenance service resulting from CUSTOMER-Requested NEC performance outside the Principal Period of Maintenance Coverage or for reasons other than normal wear and tear, will be invoiced separate from the maintenance contract invoicing. Such charges will be invoiced at the current NEC Special Maintenance Services rates as set forth in Exhibit II attached hereto. NEC Special Maintenance Service Rates are subject to change with thirty (30) days written notice to CUSTOMER. CUSTOMER agrees to pay for such services within sixty (60) days after invoice date.”
3. Section 10.1, “Charges” is deleted in its entirety and replaced with the following: “Under the terms of this AGREEMENT, CUSTOMER will pay NEC as set forth in 11.1 below, for maintenance and support services covered under this AGREEMENT. In the event Customer’s existing maintenance agreements expires prior to finalization of this Agreement, CUSTOMER will pay CONTRACTOR for services rendered prior to execution of this AGREEMENT within sixty (60) days of execution thereof.”
4. Section 11.4, “Method of Payment” is deleted in its entirety and replaced with the following: “If Payment for properly invoiced and approved maintenance charges under this Agreement is not remitted within sixty (60) days of proper invoice, NEC reserves the right to suspend further maintenance services under this Agreement upon ten (10) days written notice to CUSTOMER. Payment is due within sixty (60) days from the date of invoice. Any invoices not paid within sixty (60) days shall incur a service charge of one and one-half percent (1 ½%) per month on any outstanding, overdue balance. If payment is not made within sixty (60) days, NEC reserves the right to suspend maintenance and support services until such invoices are paid.”
5. Section 12.1, “Limitation of Liability and Indemnification” first paragraph is amended as follows:  
EXCEPT FOR LIABILITY ARISING UNDER NEC’S INDEMNITY OBLIGATIONS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR VIOLATIONS OF THE LAW BY NEC, THE MAXIMUM LIABILITY OF NEC TO THE CUSTOMER IN CONNECTION WITH ANY SALE,

SERVICE OR USE OR OTHER EMPLOYMENT OF ANY PRODUCT UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT OR OTHERWISE, SHALL IN NO CASE EXCEED ONE MILLION (\$1,000,000).

6. Section 14.2, "Insurance" is amended as follows: "(a) Comprehensive General Liability of \$1,000,000 per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, and \$2,000,000 in aggregate. The policy coverages shall include:
  - a. Premises operations and mobile equipment.
  - b. Products and completed operations.
  - c. Broad form property damage (including completed operations).
  - d. Reserved
  - e. Personal Injury.
  - f. Contractual liability.
  - g. \$2,000,000 general aggregate limit."
7. Section 15.1, "General" is deleted in its entirety and replaced with the following: "Notwithstanding the obligations falling under any payment provision in this AGREEMENT, if either party neglects to perform any of its obligations under this AGREEMENT, and such failure continues for a period of thirty (30) days after written notice thereof, the other party shall have the right to terminate this AGREEMENT. Non-payment of duly presented invoices shall constitute a material breach of and shall give rise to a unilateral cancellation sixty (60) days after."
8. Section 15.4, "General" is amended with the following notice information for Customer:

Notices to CUSTOMER shall be addressed to:

San Bernardino County Sheriff's Department  
Bureau of Administration – Contracts and Procurement  
655 East Third Street  
San Bernardino, CA 92415  
Email: BofA-Procurement@sbcscd.org  
Phone: (909) 387-3648

With a Copy to:

San Bernardino County Sheriff's Department  
Technical Services Division  
655 East Third Street  
San Bernardino, CA 92415  
Attn: Andy Lerma, Departmental IS Administrator  
Email: alerma@sbcscd.org

9. The following provision is added to the Agreement as Subsection 15.7: "This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request."

- 10. The following provisions is added to the Agreement as Subsection 15.8: “NEC has disclosed to the CUSTOMER using Attachment A – Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the CUSTOMER’s Board of Supervisors or other CUSTOMER’s County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of NEC’s proposal to the CUSTOMER, or (2) 12 months before the date this AGREEMENT was approved by the CUSTOMER’s Board of Supervisors. NEC acknowledges that under Government Code Section 84308, NEC is prohibited from making campaign contributions of more than \$250 to any member of the CUSTOMER’s Board of Supervisors or other County elected officer for 12 months after the CUSTOMER’s consideration of the AGREEMENT”.
  
- 11. Pricing for this term is as set forth in the attached Exhibit I: MBIS Maintenance Renewal Quote dated January 5, 2024. Additionally, the Customer “Bill To” information is replaced with the following:  
 San Bernardino County Sheriff’s Department  
 655 East Third Street  
 Attn: Bureau of Administration–Accounts Payable  
 San Bernardino, CA 92415  
 Telephone: (909) 387-3648  
 Email: bofa-accountspayable@sbcasd.org
  
- 12. The Attachment A titled “SB1439 Disclosure Form” attached hereto will be added to the Agreement as Exhibit III.
  
- 13. All other terms and conditions in the Agreement, not amended above, will remain in effect. Alterations to this Amendment will not be valid unless accepted in writing by an NEC officer or authorized designee. To become effective, this Amendment must be signed by both parties:

**COUNTY OF SAN BERNARDINO**

**NEC CORPORATION OF AMERICA**

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_  
(please type or print)

Name and Title: \_\_\_\_\_  
(please type or print)

Exhibit I  
Maintenance Renewal Quote

January 5, 2024

Lieutenant Albert Anolin  
County of San Bernardino  
880 East Mill Street  
San Bernardino, CA 92415

Dear Lt. Anolin:

The term of your maintenance agreement on your NEC MBIS (Multimodal Biometric Identification System) equipment is due for renewal on October 20, 2023. The total AMC (Annual Maintenance Fee) will be **\$360,000.00**. Please accept this letter as notification of the renewal of your NEC MBIS maintenance coverage effective **October 20, 2023 through October 19, 2024**.

Service	AMC
24x7 Maintenance & Support	\$ 300,000.00
Dedicated Onsite Engineer - 3 days per week	\$ 60,000.00
<b>Total Annual Amount</b>	<b>\$ 360,000.00</b>

**This is not an invoice.** Invoices will be sent separately from our billing team upon receipt of a purchase order.

The NECAM team is proud of our history supporting national, state and local law enforcement in their crucial roles and we are committed to providing you with excellent service and support. NEC appreciates your past business, and we look forward to fulfilling your future MBIS needs.

Sincerely,

*Cindy Taylor*

Sr. Project Coordinator  
NEC Corporation of America  
Ph: 916-463-070  
Cindy.Taylor@necam.com



# ATTACHMENT A

## Campaign Contribution Disclosure (SB 1439)

### DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: NEC Corporaton of America
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?  
 Yes  If yes, skip Question Nos. 3-4 and go to Question No. 5      No
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: \_\_\_\_\_
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):  
 \_\_\_\_\_
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
NEC Corporation	Parent Company

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
Not Applicable		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
Not applicable		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
Not Applicable	

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No  If **no**, please skip Question No. 10.

Yes  If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of the Contract is being considered and for 12 months after a final decision by the County.