

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
VOX NETWORK SOLUTIONS**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called  
"County," and VOX NETWORK SOLUTIONS, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of maintaining and supporting the County's Private Branch Exchange (PBX) and entering into a Master Purchase Agreement for Nortel products and services.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and Rates

Exhibit C—Master Sales and Maintenance Agreement

Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, (\$3,500,000).

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from May 1, 2009 through April 30, 2012.

This Agreement may be terminated by Contractor, Chief Information Officer/Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

**5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

**6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability . . . . . \$1,000,000
- (b) Motor Vehicle Liability Insurance . . . . . \$1,000,000
- (c) Professional Liability . . . . . \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

#### **10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### **11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor 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.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *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 Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor'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 Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager 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 days of such filing, provided that within such 30 days such entity has not notified Contractor 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. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Chris Flatmoe, CIO/Director Information Services Department  
455 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063  
Fax Number: 650-363-7800

**In the case of Contractor, to:**

Igor Kopman, CFO  
VOX Network Solutions, Inc.  
250 East Grand Avenue, Ste. 55  
South San Francisco, CA 94080  
Fax Number: 650-989-1126

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Mark Church, President, Board of Supervisors,  
San Mateo County

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

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

VOX Network Solutions, Inc.

\_\_\_\_\_  
Contractor's Signature

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

# EXHIBIT A - SERVICES

## AGREEMENT BETWEEN COUNTY OF SAN MATEO AND VOX NETWORK SOLUTIONS

*In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:*

### **1. SCOPE OF WORK**

Contractor will provide "switch only" maintenance and technical support for the County's Nortel Private Branch Exchange (PBX), associated Call Pilot Voice Mail equipment and software applications. Contractor will provide maintenance and technical support for the Contact Center applications and provide Time & Materials (T & M) support for the County's Norstar and/or similar equipment. Contractor will also provide parts and labor through a Master Purchase Agreement.

#### **A. MAINTENANCE**

The County has 14 Nortel PBX sites, 14 Norstar sites, 3 CallPilot Voicemail systems and 4 Symposiums and Optivity Telephony Manager (OTM) (Contact Centers).

The primary locations and types of platforms requiring service are:

#### **PBXs (Current SLA 24x7x365)**

Location	Description	
400 County Center, Redwood City	Nortel 81C	+2 RPE
222 W. 39 <sup>th</sup> Avenue, San Mateo	Nortel 81C	+4 RPE
21 Tower Road, San Mateo	Nortel 61C	
400 Harbor Blvd., Belmont	Nortel 61C	
1050 Mission Road, South San Francisco	Nortel 61C	+1 RPE
1457 Huntington, South San Francisco	Nortel 11C	
795 Willow Road, Menlo Park	Nortel 11C	
380 90 <sup>th</sup> Street, Daly City	Nortel 61C	+2 RPE
2500 Middlefield Road, Redwood City	Nortel 11C	
2415 University, East Palo Alto	Nortel 11C	
550 Quarry Road, San Carlos	Nortel 11C	
400 County Center, Redwood City	Nortel 11C	
1100 Trousdale Drive, Burlingame	Nortel 11C	
2000 Alameda, San Mateo	Nortel 61C	

#### **Norstar (Current SLA Time and Materials)**

Brewster Mental Health	Woodside Library
Fair Oaks Health Center	Palos Verdes Mental Health
Half Moon Bay Library	Sanchez Library
Pacifica Library	Foster City Library
East Palo Alto Library	Belmont Library
San Carlos Library	Millbrae Library
Atherton Library	Youth Crisis Center



### CallPilot Voice Mail/Peripherals

System Location	Ports	Users
Redwood City	80	3,116
San Mateo	46	1,463
South San Francisco	36	458

### Symposiums/Contact Centers

Location	Agents
Redwood City	40
San Mateo	102
Alameda	0
Harbor	55

Contractor shall be responsible for the following:

- Make available Nortel-certified technicians
- Provide support for the entire line of Nortel Communication products and services, any related peripheral or third party equipment, software and services that are required to support system or project continuity
- Prepare a Disaster Recovery Plan that shall restore the County's PBX functionality. Contractor has spare equipment and switches in South San Francisco in the event of a disaster. This would only support a single site or limited number of sites in a disaster. If a widespread disaster were to occur then Nortel has a disaster recovery program in place with PBX's in waiting to be shipped. In addition, Nortel would stop normal shipping and focus resources and equipment on the disaster area. Contractor would dedicate resources to bring the County base back online as soon as possible. Regularly scheduled back ups are strongly recommended
- Provide 24 x 7 x 365 Help Desk support for resolving all operational problems and conducting escalations as necessary
- Provide in-house technical support and access to Nortel technical support
- Provide 24 x 7 x 365 system monitoring by Nortel-certified staff of the PBX, its remote locations and equipment, its connectivity to remote locations, and all applicable application hardware and software including related PBX components
- Provide quarterly preventive maintenance to assure the continued operation of all system components. Contractor will set this up in Contractor's ticketing system on a quarterly basis and work with the County to coordinate best times and days for site visits

Service Capabilities:

- Remedial Service: Contractor will perform remedial maintenance services for covered equipment upon request by the County in order to restore malfunctioning component parts to proper working order
- Maintenance or service work shall be performed by Contractor-authorized personnel only
- Parts Replacement: Contractor reserves the right to replace any parts with a functionally equivalent used or refurbished part of comparable quality. The replacement equipment shall become the County's property and the replaced equipment shall become Contractor's property

- Response Time: Contractor shall respond to Emergency Service requests within two (2) hours following receipt of a service request and for all other failures by close of business the next business day. Initial responses will be made by remote access to the affected equipment
- Alarm Monitoring: Contractor will monitor the System 24 hours per day, 7 days per week, utilizing a County-provided Site Event Buffer Modem
- Support Hours: Unless otherwise agreed to, County support shall be available 24 hours per day, 7 days per week for all emergency service requests. For all non-emergency repair requests, County support will be available from 8:00 A.M. to 5:00 P.M., Pacific Time, Monday through Friday, excluding holidays as designated by Contractor
- Emergency Service is defined as any major system failure where any of the following conditions occur: the covered equipment cannot make or receive any voice or data calls; any of the operator consoles cannot make or receive calls' twenty-five percent (25%) or more of either trunks or stations are inoperable; any of the T1 trunks are inoperable; complete failure of the voice mail system; or additional conditions as agreed to by both VOX and Customer in writing.
- Non-Emergency Service is defined as any other malfunction not defined in Emergency Service.

#### Service Level Agreement (Maintenance Plan Service Levels)

- Response Time for Emergency Requests: Contractor shall respond to emergency requests within two (2) hours following receipt of a Service Request and for all other failures by close of business the next business day. Initial responses will be made by remote access to the affected equipment
- Response Time for Major Failures: Contractor will respond to major failures by dialing into the Switch within two (2) hours following receipt of a major alarm or if the County reports the emergency. The County can declare a ticket an emergency even if it does not meet the requirements of an emergency. ("Major Emergency" Definition: "Any major system failure where the covered equipment cannot make or receive any voice or data calls, any of the operator consoles cannot make or receive calls, twenty-five percent (25%) or more of either trunks or stations are inoperable, any of the T1 trunks are inoperable, complete failure of the voicemail system, and additional conditions as agreed to by both Contractor and the County in writing.")
- Response Time for Minor Failures: Contractor will respond to minor failures by close of business the next business day. ("Minor Failures" Definition: "Any other malfunction not considered an emergency.")

#### Contractor's Remote Monitoring Facilities for PBXs

- Contractor maintains a fully equipped remote diagnostics and software center. The Network Operations Center (NOC) is staffed 24x7x365 days per year. Contractor's NOC is staffed by experienced engineers to support Nortel Meridian 1/CS1000 Switches and applications. Contractor utilizes the Teltronics IRIS software for remote monitoring which requires County-supplied SEB modems. (The County already has SEB modems at all 14 sites.) The remote group works from home offices

### Maintenance Offerings

- Contractor will provide a secure web portal for County at no additional charge. Tickets can be opened via Contractor's 800 Number, Contractor's Sales Representative or the web portal. The web portal will instantly reply back with a ticket number when the ticket is opened. This will allow the County to have up-to-date status of a ticket from start to close. The web portal is not only used to track tickets, it is also used to check on credits, account balances and can be used to track total annual expenditures.
- Dedicated Sales Support: Monday through Friday (8:00 A.M. to 5:00 P.M.)
- Contractor can provide "LogMeIn Rescue", which allows Contractor to control a remote personal computer (PC) in seconds. LogMeIn Rescue is used by Contractor to provide instant remote support. Contractor can establish control of a remote PC over the web in seconds, without the need to pre-install software

### Escalation Procedures

- When a ticket is opened as an emergency, the Vice President of Operations is automatically copied on the ticket. If an issue needs to be escalated, please contact the Vice President of Operations (phone number on file). The Vice President of Operations has authorized the Operations Division to contact Nortel ETAS if the situation needs to be escalated to the manufacturer. The Contractor's engineer will troubleshoot and work the issue until they cannot work the issue any further. If Nortel ETAS support is needed, then Contractor will escalate immediately and work with ETAS until the issue is resolved. If onsite support is needed then Contractor will dispatch 24x7

### Phone System Warranties

- When a phone system warranty expires, Contractor will add it to the existing maintenance contract via a Change Notice. The maintenance pricing will be calculated the same way that all of the other phone systems under contract are (price per port/applications/voicemail ports). The additional system will be prorated so that the County is only paying for the actual time under maintenance. This will allow for the additional phone systems contract to sync up with the existing contract

### Maintenance Services Not included

- No telephone sets or consoles are covered
- Labor and material costs for the addition of equipment or relocation of same. This activity is considered Move, Add, and Change activity (MAC) and can be provided at Contractor's then current Time and Materials rates
- Operating supplies, accessories, paper, electrical work external to the system, and battery back-up systems or uninterruptible power supply systems
- Labor and material costs for components that do not affect the normal operation of the system (i.e. Cabinets, shelves, etc.)
- The negligent, intentional, or willful acts of the County or third parties

- Any act external to the system that causes, directly or indirectly, a system failure, either immediately or later, or other malfunction including without any limitation, failures of trunk or toll lines from local dial tone providers or long distance carriers, other equipment connected to the system, or abnormal environmental conditions, power failures or fluctuations, (for example, power fluctuations caused by lightning), flooding, water damage, and any other equipment damage associated with acts of God
- When equipment is deemed unsupportable by the Manufacturer, or it is deemed not serviceable due to lack of replacement part availability
- Any acts or events which may adversely affect the performance of the system, occasioned by acts of the County, or any third party

#### Toll Fraud Disclaimer

- Contractor makes no representations or warranty that the equipment is technically immune from or prevents fraudulent intrusions into and/or unauthorized use of the system (including any interconnection or a long distance network). The County assumes the risk of any and all fraudulent use of the system. Contractor will not be liable for any loss, cost, expense, or damages for calls made through use of the equipment

#### County's Responsibilities

- Provide access to County premises and a suitable work area for Contractor service personnel
- Appoint an Administrator (the "Contact") knowledgeable in County operational requirements as a point of contact to Contractor and with authority to act on the County's behalf in matters relating to this Agreement, including the issuance of purchase orders. Note: The process for approving purchase orders shall be as follows: the Contact, if not a supervisor with signature authority, shall request a quote from the Contractor, complete a Purchase Request based on the quote, submit the Purchase Request to his/her supervisor for signature approval. If the purchase is over \$5,000, then a Deputy Director's signature is needed. Once approvals have been obtained, the Contact shall submit the Purchase Request to ISD's Admin/Fiscal group for processing
- Provide the proper environment, electrical and telecommunications connections as specified by the system's manufacturer(s)
- Maintain back-up files and discs for all relevant software comprising a portion of or being related to the system
- Not relocate or modify any portion of the system or its components, or allow anyone access to the internal components and software without written permission from Contractor

#### Miscellaneous Items

- Time and Material Services (T&M): Any work performed on systems not covered by a Contractor Maintenance Agreement or Warranty is subject to the prevailing labor rates for Time and Material work

T & M services include: BCM and Norstars (PC Consoles)

## **B. MASTER PURCHASE AGREEMENT**

Contractor will also provide the County with parts and labor through a Master Purchase Agreement for Nortel products and services. **There are no specific purchase commitments.**

The Master Purchase Agreement shall include the following:

- **Discounts:** Discounts will be provided for all new system contracts, additional equipment contracts and Customer Service Orders (CSOs) on Nortel equipment. Discounts shall be provided based on the lesser of (1) existing negotiated state contracts or (2) the current Nortel Customer List Price (CLP) at the time of purchase less a 25 percent discount off CLP (with the caveat being that the discounted line item pricing will not fall below Contractor's cost)
- **Warranties:** Contractor warrants new equipment for one (1) year following the cutover date – For voice systems, cutover date occurs by the interconnection of the equipment to the public network and its ability to place and receive external and internal telephone calls – that the equipment under normal use and service will be free from defects and that labor will be done in a good and workmanlike manner. County shall notify Contractor of any defect, specifying the nature thereof, within the warranty period. If the equipment is found to be defective during this period, Contractor will, at its option, repair or replace the equipment. This warranty does not cover damages resulting from or associated with abuse, unreasonable use, unauthorized repair or alteration of the equipment. This warranty is not transferable and is void if the County transfers the equipment. Except for the express warranties set forth above, Contractor disclaims all warranties with regard to the equipment, express or implied, including but not limited to, the implied warranties of the merchantability or fitness for a particular purpose or of the noninfringement of the rights of third parties and the stated express warranties are in lieu of all obligations or liability on the part of the Contractor for damages arising out of or in connection with the delivery, use or performance of the equipment, the sole liability of Contractor under this warranty is the repair or replacement, at Contractor's option, of parts, which fail during the applicable warranty period because of a defect, and in no event shall Contractor be liable for special, indirect, or consequential damages
- **Cancellation:** An order once placed with and accepted by Contractor can be cancelled only with the consent of Contractor and upon terms, which will indemnify Contractor against all loss, incurred as a result thereof. Contractor will note restocking fees on quotes. County will reimburse Contractor for any restocking fees incurred. Contractor would need to provide documentation to show fees were incurred

The methods and techniques used to provide services to the County are within the Contractor's discretion, but subject to County Information Services Department's technology policies, guidelines, and requirements. The amount of time, specific hours, and location of the performance of Contractor's services is also left to the Contractor's discretion provided that Contractor coordinates with County departments as needed.

**EXHIBIT B – PAYMENTS AND RATES**  
**AGREEMENT BETWEEN COUNTY OF SAN MATEO**  
**AND VOX NETWORK SOLUTIONS**

*In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:*

**1. SCHEDULE OF CHARGES**

<b>MAINTENANCE (\$159,405.28/YEAR) * 3 YEARS</b>	<b>\$478,215.84</b>
<b>MASTER PURCHASE AGREEMENT (INCLUDING TAX)*</b>	<b>\$3,021,784.16</b>
<b>TOTAL</b>	<b>\$3,500,000.00</b>

\*The Master Purchase Agreement will include parts, labor, software and tax.

Maintenance Plan Switch Only Service includes: All components within PBX chassis or cabinets, CSU's that are connected to PBX Circuits, and maintenance terminals. Applications listed below are covered for software support only on County-provided servers.

Maintenance Service Charges shall be due and payable quarterly in advance. Coverage will not commence or continue until Contractor has received advance payment.

Each invoice will include the following:

- Agreement Number
- Purchase Order Number
- Actual services performed
- The net amount for which payment is due
- Separately state the amount for labor, materials, other charges and applicable taxes; Shipping is to be FOB – Destination (County pays freight charges; merchandise damaged in shipment must be replaced by vendor)

For projects related to the Master Purchase Agreement, outside of Maintenance, Contractor will invoice the County for all materials upon order placement. Project labor will be invoiced upon job completion, for projects under thirty (30) days in duration, or in progressive increments not to exceed thirty (30) days per increment. Invoices shall separately state the amount for labor, materials, other charges and applicable taxes.

The County will submit payment within thirty (30) days of receipt of invoice upon the approval of work performed during the billing cycle.

In no event shall total payment under this Agreement exceed THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000). The County will have the right to withhold payment if the County determines that the quantity or quality of work performed is unacceptable.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

Location	PBX Model	Active Ports	Rate	VM Type	VM Ports	Rate	CC	OTM	Other Apps	Mo. Price
400 County Center, Redwood City	Opt 81C	3317	\$1.45	CP	80	\$15.00	\$175.00			\$6,184.65
222 W. 39 <sup>th</sup> Avenue, San Mateo	Opt 81C	2589	\$1.45	CP	46	\$15.00	\$175.00			\$4,619.05
21 Tower Road, San Mateo	Opt 61C	828	\$1.45							\$1,200.60
400 Harbor Blvd., Belmont	Opt 61C	925	\$1.45				\$175.00			\$1,516.25
1050 Mission Road, South San Francisco	Opt 61C	495	\$1.45	CP	36	\$15.00				\$1,257.75
1457 Huntington, South San Francisco	Opt 11C	161	\$1.45							\$233.45
795 Willow Road, Menlo Park	Opt 11C	137	\$1.45							\$198.65
380 90 <sup>th</sup> Street, Daly City	Opt 61C	465	\$1.45							\$674.25
2500 Middlefield, Redwood City	Opt 11C	195	\$1.45							\$282.75
2415 University, East Palo Alto	Opt 11C	211	\$1.45							\$305.95
550 Quarry Road, San Carlos	Opt 11C	260	\$1.45							\$377.00
1100 Trousdale Drive, Burlingame	Opt 11C	125	\$1.45							\$181.25
400 County Center, Penthouse, Redwood City	Opt 11C	169	\$1.45							\$245.05
2000 Alameda De Las Pulgas, San Mateo	Opt 61C	514	\$1.45				\$175.00			\$920.30
Executive Discount										(\$4,913.18)

**Current MAC Labor Rates**

Moves/Adds/Changes for Basic Meridian 1 PBX Systems	Hourly Rate
Monday through Friday (8 A.M. to 5 P.M.)	\$95.00
Saturday and/or Monday through Friday (5 P.M. to 8 A.M.)	\$142.50
	\$190.00

**Applications**

Signaling Servers, Call Centers, Call Pilot voicemail, Optivity, VoIP equipment, BCM, Telephony Manager Telstrat Prods, And PC Consoles	
Monday through Friday (8 A.M. to 5 P.M.)	\$120.00
Saturday and/or Monday through Friday (5 P.M. to 8 A.M.)	\$180.00
Holidays and Sundays	\$240.00

\*All MAC activity requiring an onsite visit will be charged \$65 per trip. T&M labor rates are subject to change without notice.

# EXHIBIT C – MASTER SALES AND MAINTENANCE AGREEMENT

## AGREEMENT BETWEEN COUNTY OF SAN MATEO AND VOX NETWORK SOLUTIONS

*In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule (the "Master Purchase Agreement"):*

**Customer Name: County of San Mateo**

**Mailing Address:** 455 County Center  
**City:** Redwood City  
**State:** CA  
**Zip:** 94063-1663  
**Contact Name:** Mike Castellano  
**Telephone:** 650-363-4446  
**Fax:** 650-363-7800  
**Email address:** [mcastellano@co.sanmateo.ca.us](mailto:mcastellano@co.sanmateo.ca.us)

**Bill To Address:** 455 County Center - 3rd Floor  
**City:** Redwood City  
**State:** CA  
**Zip:** 94063-1663  
**Contact Name:** A/P C/O Joylene Montenegro  
**Telephone:**  
**Fax:**  
**Email address:**

**Equip. Location\*:**  
**City:**  
**State:**  
**Zip:**  
**Contact Name:**  
**Telephone:**  
**Fax:**  
**Email address:**

This Master Purchase Agreement is entered into by and between VOX Network Solutions, Inc. (herein referred to as VOX) and **County of San Mateo** (herein referred to as Customer).

- 1. Agreement.** This agreement sets forth the terms and conditions which VOX will provide Equipment ("Equipment") to Customer. Execution of this agreement alone is not an authorization by Customer to VOX to provide any Equipment. Equipment to be sold by VOX and purchased by Customer will be set forth in a separate Equipment Schedule, which shall be incorporated herein and attached hereto in Schedule A. All equipment purchase transactions between VOX and Customer during the term of this Master Purchase Agreement shall be covered by this Master Purchase Agreement, unless the parties agree otherwise in writing.
- 2. Term.** This Master Purchase Agreement shall commence when fully executed by both VOX and customer's authorized representative and shall remain in effect until either party notifies the other, in writing, of its intention not to renew this agreement.
- 3. Definitions.** As used in this Master Purchase Agreement, the following terms shall have the definitions as follows:
  - a. Equipment. The items of Equipment listed in each Equipment Schedule A and any amendment subsequently submitted by Customer and accepted by VOX pursuant to this Master Purchase Agreement.
  - b. Purchase Price. The price of the Equipment and installation services listed in each Schedule A and any amendment subsequently submitted by Customer and accepted by VOX pursuant to this Master Purchase Agreement.
  - c. Delivery Date. Date equipment is delivered to Customer site or VOX's Installation Preparation Facility.



- d. Cutover Date. For voice systems, cutover date occurs by the interconnection of the Equipment to the public network and its ability to place and receive external and internal telephone calls.

#### 4. **Purchase Price and Payment Terms.**

- a. Equipment. An itemized list of Equipment and the applicable prices purchased under this Master Purchase Agreement are contained in each Equipment Schedule attached as Schedule A. The Purchase Price stated in each Schedule A may be increased in accordance with the terms of the Master Purchase Agreement. Unless otherwise stated in the Schedule A, customer will pay VOX, the Purchase Price, plus applicable taxes, per the terms and schedule agreed to on the Schedule A. The Purchase Price of all Equipment provided under this Master Purchase Agreement is governed by the Agreement, above, to which this Master Purchase Agreement is attached.

The purchase price may include installation services for the Equipment as outlined in each Equipment Schedule attached as Schedule A to this Master Purchase Agreement, and such installation services are covered by this Master Purchase Agreement.

The software identified in Schedule A is subject to the indicated licensing provisions.

VOX reserves the right not to cutover the equipment if customer payments have not been received in as set forth in the Schedule A of this Master Purchase Agreement.

Customer is subject to credit approval, and is obligated to purchase the equipment, which is absolute and not conditioned on the offering or acceptance of terms and conditions of financing. Where financing is requested but not obtained, or Customer obtains independent financing, payment will be required as set forth in the Schedule A of this Master Purchase Agreement.

The Purchase Price (including Progress Payments) shall be subject to adjustment for any additional amounts due for additional items of equipment or services provided before cutover. Thereafter, such prices shall change in accordance with VOX's then current pricing policy.

The Purchase Price set forth in Equipment Schedule does not include federal, state or local taxes. CUSTOMER WILL PROVIDE TAX-EXEMPT CERTIFICATES IF TAX EXEMPT STATUS IS CLAIMED. Customer will not receive tax-exempt status without certificates.

- b. Maintenance Services. Maintenance Services are provided by VOX as outlined in the Agreement, above, to which this Master Purchase Agreement is attached.
- c. Time and Material Services. Any work performed on systems not covered by a VOX Maintenance Agreement or Warranty is subject to the prevailing labor rates for time and material work.

- 5. **Additional Equipment, Changes and Rearrangements.** A duly authorized representative of Customer, upon acceptance thereof by VOX of a Job Change Order (JCO) may add additional Equipment / Services contained in Schedule A at the charges applicable upon execution. Such modification will state the location and the additional items of equipment and/or services. The Equipment may be rearranged by VOX at Customer's request, at VOX's charges in effect at the time any changes are made. In the event the Customer requests changes in the installation specifications, VOX reserves the right to adjust the

contract price to correspond with the additions or modifications to or deletions from the amount of work to be performed. All such requests shall be made in writing by Customer to VOX and VOX shall be entitled to amend the Schedule hereto to reflect these changes.

**6. Warranty.** VOX warrants new Equipment for one (1) year following the Cutover date, but not later than 2 months following delivery of the equipment to Customer, that the Equipment under normal use and service will be free from defects and that labor will be done in a good and workmanlike manner. Customer shall notify VOX of any defect, specifying the nature thereof, within the warranty period. If the Equipment is found to be defective during this period, VOX will, at its option, repair or replace the Equipment. This warranty does not cover damage resulting from or associated with abuse, unreasonable use, unauthorized repair or alteration of the Equipment. THIS WARRANTY IS NOT TRANSFERABLE AND IS VOID IF CUSTOMER TRANSFERS THE EQUIPMENT. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, VOX DISCLAIMS ALL WARRANTIES WITH REGARD TO THE EQUIPMENT, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF THE NONINFRINGEMENT OF THE RIGHTS OF THIRD PARTIES AND THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITY ON THE PART OF VOX FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE EQUIPMENT, THE SOLE LIABILITY OF VOX UNDER THIS WARRANTY IS THE REPAIR OR REPLACEMENT, AT VOX'S OPTION, OF PARTS, WHICH FAIL DURING THE APPLICABLE WARRANTY PERIOD BECAUSE OF A DEFECT, AND IN NO EVENT SHALL VOX BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

**7. Customer's Responsibilities.** Customer agrees to perform in a timely manner, at Customer's sole expense, the following responsibilities in support of VOX Services under this Master Purchase Agreement:

- a. Provide access to Customer's premises and a suitable work area for VOX service personnel.
- b. Appoint an administrator (the "Contact") knowledgeable in Customer operational requirements as a point of contact to VOX and with authority to act on Customer's behalf in matters relating to this agreement, including the issuance of purchase orders.
- c. Provide the proper environment, electrical and telecommunications connections as specified by the system's manufacturer(s)
- d. Maintain back-up files and discs for all relevant software comprising a portion of or being related to the system.
- e. Not relocate or modify any portion of the system or its components, or allow anyone access to the internal components and software without written permission from VOX.

**8. Cancellation.** An order once placed with and accepted by VOX can be cancelled only with the consent of VOX and upon terms, which will indemnify VOX against all loss, incurred as a result thereof. Restocking fees of up to 25% of the selling price may apply to equipment purchases that are ordered but cancelled prior to installation.

**9. Remedies.** In the event that Customer is in Default under this agreement, VOX may cancel or terminate any or all service(s) provided.

**1210 Additional Limitations on Liability and Damages.** IN THE EVENT OF CUSTOMER'S FAILURE TO FULLY PERFORM CUSTOMER'S OBLIGATIONS UNDER THIS MASTER PURCHASE AGREEMENT, VOX SHALL NOT BE OBLIGATED TO PROVIDE MAINTENANCE UNDER THIS MASTER PURCHASE AGREEMENT, AND VOX SHALL NOT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS MASTER PURCHASE

AGREEMENT, BE HELD RESPONSIBLE OR LIABLE FOR ANY DELAY, FAILURE OF PERFORMANCE, LOSS OR DAMAGE SUFFERED BY CUSTOMER AS A RESULT THEREOF.

**11. Default.**

- a. Default. If either party fails to comply with any material term or condition of this Master Purchase Agreement other than an agreement to pay money, the other party may give written notice of such failure. If, within thirty (30) days after receiving such notice, the non-complying party fails to (i) correct its performance or (ii) commence and continue good faith effort to correct its noncompliance within a reasonable time, the party shall be in default ("Default"). Breach of any payment obligation on the date the payment is due constitutes a Default, which requires no notice be given by VOX.
- b. Remedies. Upon the Default of either party, the non-Defaulting party may, in addition to any of the rights it may have at law or in equity: (i) terminate this Master Purchase Agreement and immediately stop performing under this Master Purchase Agreement, including the performance of any future obligations hereunder and (ii) exercise any remedy upon Default as is identified in any applicable Schedule to this Master Purchase Agreement.
- c. Limitation on Time for Instituting Litigation. Any claim for damages or other remedy arising from this Master Purchase Agreement must be commenced within two (2) years after the action arises.

**12. Limitation of Liability.** Except as otherwise provided in this Master Purchase Agreement, both parties agree that the recovery by either party of any damages suffered or incurred by it as a result of any breach by the other party of any provision of this Master Purchase Agreement or in connection with a claim for indemnification shall be limited to the direct damages suffered or incurred by the non-breaching party as a result of the breach by the breaching party.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE LOSS OR DAMAGE OF ANY KIND OR NATURE WHATSOEVER SUFFERED OR INCURRED BY THE OTHER PART, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF RECORDS OR DATA REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLE FORESEEN.

IN NO EVENT SHALL ONE PARTY BE LIABLE TO THE OTHER FOR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS MASTER PURCHASE AGREEMENT IN EXCESS OF THE GREATER OF THE AMOUNT OF THE FEES PAID UNDER THIS MASTER PURCHASE AGREEMENT OR THE LIMITS OF ANY APPLICABLE INSURANCE COVERAGE CARRIED BY SUCH PARTY.

**13. Force Majeure.** VOX will not be responsible or liable in any way for its delay or failure to perform its obligations under this Agreement during any period which performance is prevented or hindered by conditions beyond its control, acts of God, flood or other weather conditions, war, embargo, refusal of any supplier to provide VOX or Customer the necessary parts and technical support, strikes, labor disturbances, explosions, riots, laws, rules, regulations, and order of any government authority. If such a period extends for more than sixty (60) days, then the Customer's obligations, except its obligation to pay for services or

other effort already performed by VOX, will be suspended and commensurately extended until such as performance is no longer prevented or hindered.

#### **14. Miscellaneous.**

- a. Subcontracting. VOX may subcontract any or all of the work to be performed by and under the terms and conditions of this Master Purchase Agreement. VOX will be responsible for the work of such subcontractors.
- b. Access. VOX shall have, at all reasonable times, full and unrestricted access to the Premises for the purposes of installing additional equipment and/or repairing the equipment covered by this Agreement.
- c. Successors and Assigns. The terms and provisions of this Master Purchase Agreement are intended solely for the benefit of and shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and, if permitted, assigns and it is not the intention of the parties to confer third party beneficiary rights upon any other person or entity. This Master Purchase Agreement shall not be transferred or assigned by either party without the prior written consent of the other party, except that it may be assigned without such consent to the successor to all or substantially all of the business and assets of a party provided that the successor agrees in writing to be bound to all of the obligations of the assigning party hereunder.
- d. Entire Agreement. This Master Purchase Agreement constitutes the entire agreement between the parties with respect to all subject matter described herein. This Master Purchase Agreement supersedes all previous agreements, negotiations, and discussions, whether written or oral pertaining to the subject matter described herein. Should any conflict exist between the terms of the Master Purchase Agreement and the terms of any Purchase Order, Equipment Schedule, or Services Schedule, the Master Agreement shall take precedence. HOWEVER, all terms of this Master Purchase Agreement are subordinate to the terms of the Agreement, above, to which this Master Purchase Agreement is attached. To the extent that any conflict exist between the terms of the Master Purchase Agreement.
- e. Toll Fraud Disclaimer. VOX makes no representation or warranty that the equipment is technically immune from or prevents fraudulent intrusions into and/or unauthorized use of the System (including any interconnection or a long distance network). Customer assumes the risk of any and all fraudulent use of the System, and agrees to pay for all charges incurred as a result thereof. VOX will not be liable for any loss, cost, expense, or damages for calls made through use of the equipment.
- f. Governing Law and Disputes. This Master Purchase Agreement shall be governed and interpreted in accordance with the laws of the State of California, excluding its conflicts of law principles and excluding any application of the United Nations Convention on the International Sale of Goods. Any disputes arising under or related to this Master Purchase Agreement shall be finally settled by binding arbitration in proceedings held in the English language in San Francisco, California and administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.