

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
VIALANGUAGE, INC.**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and  
viaLanguage, Inc., 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 document translation 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

Attachment I—§504 Compliance

**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 ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000).

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2010 through June 30, 2013.

This Agreement may be terminated by Contractor, the Chief of the Health System 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.

County shall indemnify and save harmless Contractor, 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 County'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 Contractor, 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 Contractor 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) 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 and attached hereto and incorporated by reference herein as Attachment "I," 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:**  
SaraT L. Mayer, Director  
Health Policy and Planning  
225 37<sup>th</sup> Avenue, Room 178  
San Mateo, CA 94403

**In the case of Contractor, to:**  
Steve Vogeltanz, Vice President of Healthcare  
viaLanguage, Inc.  
700 SW Taylor Street, Suite 310  
Portland, OR 97205

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: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

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

ATTEST:

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

viaLanguage, Inc.

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

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

Long Form Agreement/Non Business Associate v 8/19/08

## Exhibit "A"

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

Upon the request from staff of the Aging & Adult Services, Behavioral Health & Recovery Services, Community Health, Correctional Health, Family Health Services, Health Policy & Planning, and San Mateo Medical Center divisions of the San Mateo County Health System (SMCHS), Contractor shall provide the following services:

- A. Provide translation of documents and other text communications. Priority languages for translation of documents are Spanish, Chinese, Tagalog, Tongan, and Russian. With sufficient notice, Contractor shall accommodate requests for other languages as available.
- B. Translations shall be completed at a 6<sup>th</sup> grade reading level, and in a manner that is culturally appropriate assuming Contractor receives English source files between 4<sup>th</sup> and 8<sup>th</sup> grade literacy..
- C. Provide written transcription of recorded focus group responses in chart and/or narrative format in priority languages, and other languages accommodated as requested and available.
- D. Provide word processing and formatting services, including typesetting for non-Latin and non-Germanic based languages as needed. Contractor shall accommodate requests for other languages as requested and available.
- E. Provide consultation for translation of education and marketing materials, as well as website development.
- F. Services will be provided by certified and qualified translators who are experienced in providing services to low-income, culturally diverse communities. Translators shall participate in at least eight (8) hours training per year on providing culturally appropriate services.
- G. Contractor shall provide such services in accordance with the following policies and procedures:
  - Hours of Operation: Contractor's office is open 9:00 AM to 5:00 PM, Monday through Friday and closed Saturday, Sunday, and all federally recognized holidays.
  - Holidays for FY 2010-2011, FY 2011-12 and FY 2012-2013 are as follows:

<b>2010</b>	<b>2011</b>		<b>2012</b>		<b>2013</b>
Jul 5	Jan 1	Oct 10	Jan 2	Oct 8	Jan 1
Sep 6	Jan 17	Nov 11	Jan 16	Nov 12	Jan 21
Oct 11	Feb 21	Nov 24 & 25	Feb 20	Nov 22 & 23	Feb 18
Nov 11	May 30	Dec 26	May 28	Dec 25	May 27
Nov 25 & 26	Jul 4		Jul 4		
Dec 25	Sep 5		Sep 3		

- **Requesting Services:** When County requests services, the contractor will provide time estimates and price quotes for both Standard and Express completion times. *Standard* rates will be charged as described in Payment Rates, Paragraph A in this Exhibit B. *Express* rates will be charged as *Express/Priority Service* as described below in Payment Rates, Paragraph A in this Exhibit B.

Exhibit “B”

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

A. Payment Rates:

<b>Translation and proofreading, per word by target language</b>	<b>Healthcare</b>
Spanish ( <i>Latin America</i> )	\$0.18
Chinese ( <i>Traditional or Simplified</i> ), Russian	\$0.20
Vietnamese	\$0.22
Belarusian, Bosnian, Bulgarian, Creole ( <i>Haitian</i> ), Croatian, Czech, English, French ( <i>France and Canada</i> ), German, Hindi, Indonesian, Italian, Korean, Polish, Portuguese ( <i>Portugal and Brazil</i> ), Romanian, Slovak, Slovenian, Spanish ( <i>Spain</i> ), Ukranian, Urdu	\$0.26
Amharic, Arabic, Armenian, Burmese/Myanmar, Danish, Dutch, Estonian, Farsi/Persian, Finnish, Greek, Hebrew, Hmong, Hungarian, Japanese, Khmer/Cambodian, Lao, Malay, Norwegian, Oromo, Punjabi, Somali, Swahili, Swedish, Tagalog/Filipino, Thai, Turkish, Uzbek, Yiddish, and others	\$0.31
Latvian, Lithuanian	\$0.36
Marshallese, Samoan, Tongan	\$0.46

B. Other services:

Project management (PM)	10% of total price; waived for jobs submitted through OLS-viaLanguage’s On-Line Ordering System
Glossary/style guide development/translation	\$75 per hour
Desktop publishing, graphic editing	\$75 per hour
Third-party QA	\$0.03/target word
Minimum charge, including 3 <sup>rd</sup> -party QA and PM	\$110 (\$165 express)
Express/priority service	50% surcharge
Proofreading work of other translators	1/3 of the Translation Price
Notarization	\$50
Other project coordinator tasks ( <i>e.g. file preparation, glossary/TM admin</i> )	\$65 per hour
Localization Engineering	\$65-\$75 per hour

- C. Cancellations: When a request for services is to be cancelled or modified, County is to notify Contractor of the change during hours of operation as described above in Paragraph I.F.1 in this Exhibit A. Requests for cancellations or modifications can be made by email, phone or through the contractor's website. If a project is cancelled after a request for services has been made, the County is responsible for payment on all work completed at the point of cancellation.
- D. Other Expenses: Contractor is expected to be responsible for all other expenses incurred during the performance of services rendered under this Agreement.
- E. Maximum Payment: In any event, the maximum amount County shall be obligated to pay for the contract term July 1, 2010 through June 30, 2013 for services rendered under this Agreement shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000).
- F. Invoicing: Contractor shall submit invoices to the contract manager of the SMCHS describing services provided for the previous month. Invoices provided for each calendar month will be detailed and mailed as a statement at the beginning of each month, and signed by an authorized agency representative. Payment for labor or services shall be on the basis of a per word rate and actual hours worked as shown in viaLanguage's Service Fees or Estimate Letter attached hereto. County agrees to make payments to viaLanguage upon receipt. Interest at the lesser of 1.75% per month or the highest amount permitted under applicable law will be charged on all past due balances over 30 days outstanding. All errors, claims, or requests for adjustment must be presented within thirty days after the date of delivery, or such work will be deemed to have been accepted.
- G. Claims Certification and Program Integrity: Anytime Contractor submits a claim to the County for reimbursement for services provided under Exhibit A of this Agreement, Contractor shall certify by signature that the claim is true and accurate by stating the claim is submitted under the penalty of perjury under the laws of the State of California. The claim must include the following language and signature line at the bottom of the form(s) and/or cover letter used to report the claim:  
 "Under the penalty of perjury under the laws of the State of California, I hereby certify that this claim for services complies with all terms and conditions referenced in the Agreement with San Mateo County.  
 Executed at \_\_\_\_\_ California, on \_\_\_\_\_, 20\_\_\_\_
- H. Reporting: Contractor shall make available its online translation and reporting tool for County that includes the following details: 1) total costs incurred by each division; 2) number of requests submitted by each division, and further stratified by language requested. At least once per year and upon request, Contractor shall attend a feedback session with County to review contract and services provided.
- I. Budget modifications may be approved by the Chief of SMCHS or her designee, subject to the maximum amount set forth in Paragraph II.D.

- J. If County or Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may be renegotiated, allowed to continue to end of term, or terminated. Any unspent monies due to performance failure may reduce the following year's agreement, if any.
- K. In the event this Agreement is terminated prior to June 30, 2013, the Contractor shall be paid for services already provided pursuant to this Agreement.
- L. In the event Contractor claims or receives payment from County for a service, reimbursement for which is later disallowed by County or the State of California or the United States Government, then Contractor shall promptly refund the disallowed amount to County upon request, or, at its option, County may offset the amount disallowed from any payment due or become due to Contractor under this Agreement or any other agreement.
- M. Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.