

**AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** (hereafter Agreement) is made by and between the **County of Santa Barbara**, a political subdivision of the State of California (hereafter COUNTY) and **NEC Corporation of America**, a Nevada corporation, having its principal place of business at 6535 N. State Highway 161, Irving, TX 75039-2402 (hereafter "CONTRACTOR" or "NEC") wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Carl Thornton at phone number 805-681-5581 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Lori Meyerov, Acquisition Manager, at phone number 562-299-4526 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:  
 To COUNTY: Communications Manager, 4568 Calle Real Bldg. C, Santa Barbara, CA 93110  
 To CONTRACTOR: NEC Corporation of America, 6535 N. State Highway 161, Irving, TX 75039  
 Attn: Legal Division – Contract Administration Department

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** This Agreement shall become effective upon execution by both parties. CONTRACTOR shall commence performance within 5 business days of the effective date of this Agreement, and end performance upon completion, but no later than December 31, 2014 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All

products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of CONTRACTOR to fulfill the obligations herein. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not effect any right or remedy which COUNTY may have in law or equity.

2. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CONTRACTOR.

B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **PREVAILING WAGE.** CONTRACTOR shall comply with the California Labor Code, including but not limited to the payment of prevailing wage when required. The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are on file at the office of the Department of Public Works Engineering Division, 123 East Anapamu Street, Santa Barbara, CA 93101. These wage rates are not listed in the Proposal and Contract (Example) for the project. Copies of the general prevailing wage rates shall be made available to Contractor or any other interested party on request. The prevailing wage rates are also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/dlsr/pwd> Changes, if any to the general prevailing wage rates will be available at the same location.

27. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

28. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

29. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any

other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

30. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

31. **BUSINESS ASSOCIATE.** The County is considered to be a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d et seq. and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, ("Privacy Rule and Security Rule"). The Contractor is considered to be a "Business Associate" under the Privacy Rule. Contractor must also comply with the Security Rule as a Business Associate, if under this Agreement, it receives, maintains or transmits any health information in electronic form in connection with a transaction covered by part 162 of title 45 of the Code of Federal Regulations.

The County and Contractor acknowledge that HIPAA mandates them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the performance of this Agreement. The parties agree to the terms and conditions set forth in Exhibit E - HIPAA Business Associate Agreement.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **NEC Corporation of America**.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

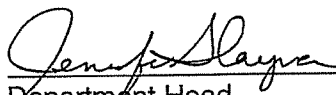
By:   
Deputy

**COUNTY OF SANTA BARBARA:**

By:   
Chair, Board of Supervisors.

Date: 10-15-13

**RECOMMENDED FOR APPROVAL:**

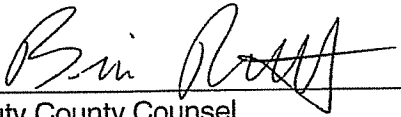
By:  For Matt Pantles  
Department Head

**CONTRACTOR:**  
DAVID SCHURZ  
SALES DIRECTOR

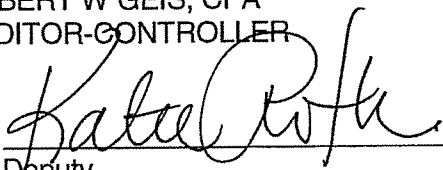
By: 

SocSec or TaxID Number **20-0665337**

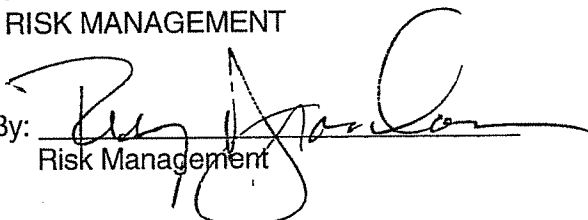
**APPROVED AS TO FORM:**  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By:   
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
ROBERT W GEIS, CPA  
AUDITOR-CONTROLLER

By:   
Deputy

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By:   
Risk Management

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

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12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

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20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

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23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

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29. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any

other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

30. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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The County and Contractor acknowledge that HIPAA mandates them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the performance of this Agreement. The parties agree to the terms and conditions set forth in Exhibit E - HIPAA Business Associate Agreement.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **NEC Corporation of America**.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Chair, Board of Supervisors.

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

**RECOMMENDED FOR APPROVAL:**

**CONTRACTOR:**  
DAVID SCHURZ  
SALES DIRECTOR

By: *Jennifer Slayton* *For Matt Pontes*  
Department Head

By: *David Schurz*  
SocSec or TaxID Number **20-0665337**

**APPROVED AS TO FORM:**  
DENNIS A. MARSHALL  
COUNTY COUNSEL

**APPROVED AS TO ACCOUNTING FORM:**  
ROBERT W GEIS, CPA  
AUDITOR-CONTROLLER

By: *Bin Roth*  
Deputy County Counsel

By: *Kate Profka*  
Deputy

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By: \_\_\_\_\_  
Risk Management

**EXHIBIT A**  
**PHASE II - STATEMENT OF WORK**

The NEC Telephone System Upgrade consists of two phases.

Phase I - Final System Design. NEC is currently performing Phase 1 work based on the County's Purchase Order No. CN15720 signed on July 9, 2013. The Statement of Work for Phase 1 is included as Exhibit A.3.

Phase II - NEC System purchase and installation. NEC acknowledges that Phase II is contingent upon full satisfactory completion and written acceptance and approval of all scheduled deliverables for Phase I.

The "System" is defined as all hardware and labor components for the SV8500; Survivable Remotes; Microsoft Lync OW5000 interface; Ethernet switches for connecting distributed voice architecture; all software; all subsystems; all management tools; all telephones; circuits, microwave, and all cable and wire required to make the System work.

"Site System(s)" is defined as the specific itemized list of components for each respective site that must be installed and working in order to qualify that site for Cutover. The Site Systems consist of SV8500 Systems and Subsystems; as such terms are defined in Exhibit A.4 below.

This Exhibit A also includes the following sub-exhibits:

- Exhibit A.1 is County's Request for Proposal (RFP) No. 825003 dated 28 November 2012, and NEC's response to this RFP and all subsequent clarification documents.
- Exhibit A.2 is NEC's pricing based on NEC's response to the RFP No. 825003 and its clarifications on April 9 and April 26, 2013.
- Exhibit A.3 is County's Phase I – Statement of Work and NEC's response to Phase I – Statement of Work. NEC is currently performing Phase 1 work based on the County's Purchase Order No. CN15720 signed on July 9, 2013.
- Exhibit A.4 is Installation Sites.
- Exhibit A.5 is List of County Staff involved in the project.
- Exhibit A.6 is NEC's List of Subcontractors.
- Exhibit A.7 lists additional terms and conditions to the "Agreement for Services of Independent Contractor".

Following are the County of Santa Barbara's requirements for Phase 2 of the NEC Telephone System Upgrade - NEC System purchase and installation.

## 1 Project Manager

- 1.1 NEC will assign the same Project Manager as in Phase I. The County reserves the right to request a change in Project Manager, NEC will arrange for an interview with the County and the NEC Project Manager. The County reserves the right to approve the Project Manager prior to the start of work.
- 1.2 NEC will exercise reasonable commercial efforts not to change the Project Manager during the implementation of Phase II. However, NEC may, upon notice to the County, remove and replace the Project Manager or any of its other personnel performing Services for reasonable causes, so long as any personnel removed is replaced by a person trained and experienced so as to perform with capability equal to the person removed.

## 2 Equipment Purchase and Installation

- 2.1 NEC shall not order any equipment until the Phase I deliverables are complete, except for equipment required for the first two (2) Cutovers at the Calle Real and Betteravia sites.
- 2.2 The County shall authorize NEC in writing to proceed with Phase II installation of select County sites, and such authorizations shall not be unreasonably withheld, delayed or conditioned by the County, provided NEC has completed Phase I deliverables for those sites.
- 2.3 In Phase I, NEC will develop a detailed schedule and implementation schedules for the System based on each site.

## 3 Order of Precedence

- 3.1 Agreement for Services of Independent Contractor and Additional Terms and Conditions listed in Exhibit A.7.
- 3.2 County's Request for Proposal No. 825003 document, dated 28 November 2012 and NEC's response and all subsequent documents.
- 3.3 NEC's response to Phase I Statement of Work and Resulting Documents.
- 3.4 Phase I - Final Design Deliverables and Best and Final Pricing.

## 4 County Sites

Implementation sites resulting from the Phase I Final Design are listed in Exhibit A.4.

## 5 Orderly Work

- 5.1 NEC acknowledges and accepts the occurrence of concurrent work performed by others in and around the Implementation sites. NEC is responsible for coordinating its work with that of other contractors, consultants or workers to provide orderly and efficient execution of services or the work.
- 5.2 NEC installation sites are listed in Exhibit A.4. The order of installation sites and systems may change after completion of the Phase I.
- 5.3 NEC shall at all times keep the work area in a neat and orderly condition. NEC is responsible for removing from the Installation sites all debris resulting from its work.
- 5.4 NEC shall identify any subcontractors performing any work related to the installation in Exhibit A.6.

NEC further agrees that a request for staging area(s) will be coordinated with the County's Project Manager Carl Thornton. Due to limited areas on Installation sites and due to security as well as safety issues, NEC shall comply with all rules and regulations set forth by the County in the use of temporary staging area(s) assigned to NEC. Any deviation from the County's instructions shall be grounds for the County to refuse NEC any use of a temporary staging area.

## 6 Change Orders

- 6.1 The County may, at any time, request a change to the statement of work required under Phase II, including, but not limited to, alterations, additions, deviations, and omissions from or to the Phase I Statement of Work. The County shall initiate such a change by providing NEC with a written Change Order as defined herein.
- 6.2 NEC shall provide the County with a written assessment of the potential Change Order identifying the price and schedule impact of the proposed implementation of the Change Order. NEC shall not commence work on the requested change until the County and NEC have agreed in writing to the price resulting from the Change Order. In the event NEC performs changed work without written authorization, NEC hereby acknowledges an express waiver to any claim for payment or adjustment in the time for performance for any unauthorized work performed pursuant to this Agreement.
- 6.3 NEC shall prepare the Change Order for the County's written approval. The Change Order shall be sequentially numbered. The Change Order shall describe the proposed changes to the Statement of Work and shall contain all necessary information for County's signature.

## 7 Lost Key

NEC will be liable for all costs for re-keying all locations involved in the event of lost keys in the possession of NEC. NEC will be required to sign for a key and will be provided a receipt once the key is returned to the County.

## 8 IP Licenses

IP system and station licenses purchased for one site could be used for any other site in the County's network.

## 9 Equipment Room Costs

Once the County has incurred costs for preparing the equipment rooms based on NEC's written instructions. Any additional costs as the result of any NEC's revisions will be borne by NEC. NEC will be allowed a final inspection of the equipment rooms to confirm that rooms conform to NEC's instructions.

## 10 Cutover

Cutover is the date when NEC has switched the circuits over to each new Site System and the applicable Site System is available for use and is performing in accordance with the requirements of the negotiated Terms and Conditions.

Upon Cutover of each Site System, NEC will notify the County that the Site System is Cutover by presenting the County with a checklist, itemizing all of the equipment and services delivered for such Site System (the "Project Completion Checklist"). Within five (5) business days after receipt of the Project Completion Checklist, the County will either: (a) confirm that the Cutover for such Site System is complete by signing the Project Completion Checklist and returning it to NEC or (b) provide NEC with a written notification ("Punchlist") detailing how the Cutover fails to materially conform with the then-current requirements for such Site System. Items that are not expressly included in the then-current scope for such Site System will not qualify as Punchlist items. If the County fails to provide a Punchlist or sign and return the Project Completion Checklist to NEC within five (5) business days of receipt, the applicable Site System will be deemed Cutover and NEC will be entitled to invoice the County in accordance with the schedule set forth in Exhibit B.1.

## 11 System Acceptance Test

NEC shall identify to the County the Acceptance Test criteria required for each of the subsystems that comprise the System. The County shall have the right to accept or reject such testing criteria.

## 12 Acceptance

12.1 NEC must demonstrate that the System has been installed based on NEC's Final Design, and is in accordance with the manufacturers' specifications. There will be an Acceptance Clock that runs for 30 days or 720 consecutive hours (30 days times 24 hours) following the Cutover of each Site System based on NEC's Acceptance Criteria established during the Final Design, as accepted by the County. "Major Service Outage" when used in this section 12.1, is defined to mean any of the following occurrences or events caused by a defect or malfunction of the System: (a) any unscheduled total service denial condition of the System or of any Subsystem (System down) (b) any total group of trunks not operational (i.e., all incoming trunks, all outgoing local trunks, any T1 and/or PRI, all DID trunks) (c) any service-affecting condition which is not total but which does affect all groups of trunks, (d) any unscheduled service outage affecting more than 10% of the installed telephones on any Subsystem at a given time, (b) any CCIS failure that precludes the County's ability to make site-to-site calls through the System.



Any outage or failure of the System or any Subsystem that is not a Major Service Outage will be considered a "Minor Service Outage". The Acceptance Clock will not be impacted based on any event that is not caused by a defect in the System or the Subsystem(s) (e.g., Telco failures, general failure of the Internet, etc.), or based on Minor Service Outages. If any Minor Service Outage persists beyond ten (10) consecutive days, such Minor Service Outage may, at the County's reasonable discretion, be elevated to a Major Service Outage, which will cause the Acceptance Clock to be reset to zero. Upon the expiration of the thirty (30) day Acceptance period, the County will provide written approval that Acceptance has been achieved.

12.2 The County shall be present and witness to all such tests at the time of performance testing by NEC. When tests have been completed to NEC's satisfaction, NEC shall give the County written notice that the tests have been successfully completed. NEC shall provide copies of tests and any required certification that all applicable standards and specifications have been met.

12.3 The Acceptance test clock will stop or be reset to zero upon NEC's receipt of notification from the County of any Major Service Outage..

### 13 Warranty

System must be warranted by NEC and by the manufacturer to be free of defects in equipment, software, and workmanship for a period of at least one year following System Acceptance. NEC, at its own expense, shall within ten (10) calendar days after receipt of notice from the County 1) correct any defective work to the County's satisfaction, or 2) replace any other property which is damaged by the correction of said work. "Defective Work" means any work or portion thereof, which is defective or otherwise does not conform to the requirements of this Agreement and its exhibits or attachments and/or change orders.

### 14 System Reliability and Availability

NEC will be required to guarantee the System's resiliency, accessibility, security, and reliability based on the manufacturers' and NEC's specifications; including Voice over IP, as long as the County implements, performs, and keeps current the requirements that NEC has specified for quality of service (QoS) and security requirements for the Local Area Network (LAN) and the Wide Area Network (WAN).

### 15 Implementation Performance Incentives

The County and NEC agree that if the Cutover for the Calle Real and Betteravia Site Systems is not completed by December 15, 2013, damages to the County would be extremely difficult or impracticable to determine. The following amount is a reasonable estimate and a reasonable sum for such damages.

If NEC fails to complete the Cutover for the Calle Real and Betteravia Site Systems by December 15, 2013, NEC agrees to pay the County, as fixed and liquidated damages, and in lieu of all other damages, the sum of One Thousand Dollars (\$1,000.00) for each calendar day commencing on

December 16, 2013, and continuing for a maximum of fourteen (14) days thereafter; provided, however, NEC shall not be liable for such damages if:

- the COUNTY fails to sign and return this Agreement to NEC by October 16, 2013;
- the delay was caused by matters beyond the control of NEC, including force majeure conditions as set forth in section 11 below; or
- the delay was not caused solely and directly by NEC'S failure to perform.

At the conclusion of the fourteen (14) day liquidated damages period, if the Calle Real and Betteravia Site Systems have not been cut over, the County may cancel this Agreement without incurring cancellation charges.

The foregoing is the exclusive remedy for NEC's failure to complete the Cutover of the Calle Real and Betteravia Site Systems by December 15, 2013. Except as otherwise expressly agreed to in writing by an authorized representative of NEC, NEC will not be liable for liquidated damages related to any other Site Systems,.

## 16 Current Maintenance Agreement

16.1 NEC will continue to provide on-site maintenance to the County under the current County agreement no. BC-04-167, as referenced in Exhibit A.8 of this Agreement.

16.2 NEC agrees to adjust the mix of its on-site maintenance staff, in accordance with the options selected by the County from NEC's response to the County's Request for Proposal No. 825003 prior to installation of the first NEC 8500 upgrade.

16.3 NEC will adjust and prorate the Base Support and Other Support Services listed on Schedule A of the renewal agreement effective July 1, 2013, BC-04-167 based upon service options elected by the County for the System upgrades and replacements.

16.4 The parties will negotiate a new maintenance contract for ongoing coverage of the System. If executed, the new maintenance contract will include the cost of Software Assurance during Phase II and best and final pricing in Phase I.

16.5 Except as expressly proposed by NEC in its response to the County's Request for Proposal No. 825003, and elected and agreed to by the County in writing, the foregoing will not be construed to constitute a specific commitment by NEC to deliver fewer or additional maintenance services at a specified rate.

### **Exhibit A.1 – RFP and NEC’s Response**

County’s Request for Proposal No. 825003 document, dated 28 November 2012 and NEC’s response and all subsequent documents. Following are some of the documents on file with the County of Santa Barbara, Department of General Services and incorporated by reference.

- NEC Telephone System Upgrade RFP Final.docx
- 01 NEC Response COSB\_Final.docx
- Config 1 2 Autoquote NEC kc final.xlsm
- COSB Pricing RFP Final.xlsx
- Config 1 2 Autoquote NEC kc final.xlsm
- County of SB NEC IP CCIS Numbers 4-5-13.xlsx
- NEC TFR-Cost\_Proposal\_07nec.xlsx

**Exhibit A.2 – NEC RFP Pricing**

NEC RFP Pricing Response	
RFP Response Categories	NEC IPCCIS RFP Final
	4/9/13
SV8500 Hardware	\$486,403
Gateway Hardware	\$98,621
VoIP Licenses	\$26,772
ACD Licenses	\$24,991
Navigator Upgrade	\$32,092
VoIP Telephones	\$159,711
Professional Services	\$616,667
Analog Adapters	\$0
Interface Cards	\$194,063
Chip Kits	\$26,067
UM8700	\$252,387
MTS	\$13,714
Amcom 911	\$77,465
Nuance	\$0
Consortium	\$0
IVR*	\$40,944
Network Assessment	\$17,630
Warranty	\$119,295
Software Assurance	\$95,483
Spares	\$17,579
Training	\$5,893
Freight	\$23,541
Taxes**	\$91,572
OW5000	\$126,635
MA4000/LADAP/AD***	\$24,000
NEC Trade In	-\$140,412
Total After Trade In	\$2,431,115
Less Phase I	\$82,442
Total After Phase I	\$2,348,673
*Note: NEC used the UCB integrated IVR.	
**Note: NEC has not adjusted their sales tax.	
***Note: NEC caveated travel cost needs to be added for LDAP/AD integration	

### Exhibit A.3 - Phase I – Statement of Work and NEC's Response

NEC's response to Tasks 1 – 16 Phase I Statement of Work and Resulting Documents as completed by NEC.

#### Deliverables: Item 2.1 and 11.1.2.

The Betteravia and Calle Real sites are the first ones to be upgraded. Following is the upgrade process for each site.

Betteravia - 2125 S. Centerpointe Parkway, Santa Maria.

- Upgrade the existing 2400 IPX to the Latest SV8500 with new gateway chassis and the latest S-7 software and CPU's
- Install 2 new 4 post racks for the SV8500 gateway chassis CPU's.
- Use the project plan in place from the Phase 1 project.
- Interface with the County's Voice and Data Network (Admin and Voice)
- Installation of all (reconciled in Phase I) items in the Equipment (From RFP County's Request for Proposal (RFP) No. 825003) Flies NEC TFR- Autoquote \_02NEC and NEC TFR-Cost\_Proposal\_07NEC
- Services (reconciled in Phase I) specified in the Services List (From RFP County's Request for Proposal (RFP) No. 825003) Flies NEC TFR- Autoquote \_02NEC and NEC TFR-Cost\_Proposal\_07NEC

Calle Real: 4436 Calle Real, Santa Barbara

- Upgrade the existing 2400 IPX to the Latest SV8500 with S-7 software and CPU's
- Install 1 new 4 post rack for the SV8500 CPU's and new servers
- Use the project plan in place from the Phase 1 project for the Calle Real SV8500
- Interface with the County's Voice and Data Network (Admin and Voice)
- Installation of all (reconcile in Phase I) items in the Equipment (From RFP County's Request for Proposal (RFP) No. 825003) Flies NEC TFR- Autoquote \_02NEC and NEC TFR-Cost\_Proposal\_07NEC
- Services (reconciled) specified in the Services List (From RFP County's Request for Proposal (RFP) No. 825003) Flies NEC TFR- Autoquote \_02NEC and NEC TFR-Cost\_Proposal\_07NEC
- Deliverable: 11.1.2: Test plans are listed below. These plans will be part of the overall Project Plan being developed by NEC.
  - Test IPPAD Cards
  - Test IPCCIS to EOC
  - Station to Station Calling
  - Station to Station Calling CCIS
  - Call Forwarding Internal
  - Call Forwarding CCIS
  - Call Forwarding Off Premise
  - Outbound Calling Local/Long Distance (Each OPR)
  - Inbound Calling (Each PRI)
  - Verify ACD Night Mode

- Verify ACD Log On and Function
- GNAV
- Refresh MWI
- Voice Mail Integration
- SMDR
- Paging
- MOH
- SV8500 CPU & TDSW Redundancy

Exhibit A.3 - Phase I - Statement of Work  
FINAL  
Description of Required Tasks

The upgrade of the NEC telephone System consists of two phases. Phase I is the Final System Design, and Phase II is the System Procurement and Implementation, resulting from Phase I.

System is defined as all hardware components for the SV8500; Survivable Remotes; Microsoft Lync OW5000 interface; Ethernet switches for connecting distributed voice architecture; all software; all subsystems; all management tools; all telephones; circuits, microwave, and all cable and wire required to make the System work.

It is understood by both the County of Santa Barbara (County) and NEC Corporation of America (NEC); that the work listed below is a requirement in preparation for the upgrade and installation of a complex telephone system. NEC will perform all necessary tasks, which will result in a properly configured Final System Design.

NEC agrees that it will supply to the County of Santa Barbara Final Design Pricing and quotes as part of Phase I.

This Statement of Work ("SOW") shall be considered to be successfully completed upon delivery of the Final System Design in printed format and on softcopy media. This will include all data, drawings, reports, and other materials that have been collected, created, or developed pursuant to the Statement of Work.

The County and NEC shall meet weekly either in person or by a web collaboration tool, to discuss the progress of the work. The County shall provide NEC input regarding the Final System Design. NEC will prepare meeting notes and distribute to the County within 2-days of the meeting.

This section identifies the major tasks associated with completing a comprehensive Final System Design. These tasks are to be completed by NEC.

NEC shall work with the County to develop the Final System Design specifications for a voice network and related network services meeting the design requirements specified in the NEC Telephone System Upgrade - Request for Proposal No. 825003 document, dated 28 November 2012, unless otherwise specified in this document or other documents provided by the County.

As part of the Final System Design process, NEC shall be responsible for generating all detailed design and implementation documents required to fully identify 1) voice network and services design decisions including specifications and configurations and 2) data network and services implementation plans as detailed in the following sections.

Following are the major tasks to be completed by NEC;

1. Project Manger
  - 1.1. NEC will assign and provide a resume of the Project Manager.
  - 1.2. NEC will arrange for an interview with the County and the NEC Project Manager. The County reserves the right to approve the Project Manager prior to the start of work.
2. Develop Voice System Network Final Design

The Final Design process for the voice network and related network services shall include, but is not limited to, the following tasks associated with voice network design:

- 2.1. Design and document the NEC 2400 upgrade sites including networking architecture, switch configurations and interfaces.
- 2.2. Design and document the NEC 2000/DRU sites including networking architecture, and Survivable Remote Media Gateway Controller (SR-MGC) configurations.
- 2.3. Design and document APCD and APCD Cook Street SR-MGC. APCD is not a county department, but uses the County's telephone system. NEC will assist County IT staff in designing the QoS and security policies that must reside on the APCD network.
- 2.4. Develop cut-over process and transition plan.
- 2.5. Identify and document connectivity (fiber, point-to-point T1s, Microwave etc.) between NEC 2400 and the remotes 2000/DRU sites.
- 2.6. Design temporary dual operation of the current equipment and NEC's proposed equipment, where applicable.
- 2.7. Prepare an updated dial plan for any changes that might occur in the dial plan as part of this upgrade.
- 2.8. Identify and document special circuits through the PBX (as an example, elevator phones, security, fax lines, modem lines, data circuits etc.)
- 2.9. Develop/ document any changes to the Automatic Route Selection patterns.
- 2.10. Identify critical telephones with the County staff to minimize downtime.
- 2.11. Identify special analog and digital interfaces that may change as a function of the upgrade, defining its treatment in the new system.
- 2.12. Document button information, including message waiting, line appearances, and call forwarding etc.
- 2.13. Modify and create template standards for station equipment.
- 2.14. Document new IP phones, telephone type, extension number, location, and outlet number, and data port on the County supplied floor plans.
- 2.15. Review and update the toll fraud prevention plan.
- 2.16. Provide necessary equipment specifications that the County will be required to supply.
3. Prepare for Existing Database Backup and Review Process
  - 3.1. Identify existing applications with associated special or dedicated equipment that will not show up in the data review process.
  - 3.2. Review and document, if County's current telephone number assignments and associated telephone type, feature class, coverage patterns, insuring that previous programming is retained upon upgrade. (System back up and reload will be done to achieve this outcome)Identify and document recorded announcements, for example DID intercepts and ACD, insuring that previous programming is retained upon upgrade. (System back up and reload will be done to achieve this outcome.)



- 3.3. Identify and document special applications that integrate with the PBX today and insure that previous programming is retained upon upgrade. (System back up and reload will be done to achieve this outcome.)
- 3.4. Identify any feature conflicts between the current and proposed System and insure they are addressed and accommodated for insuring that previous programming is retained upon upgrade. (System back up and reload will be done to achieve this outcome.)
4. Identify and document Trunking requirements including, PRI and CentraNet circuits per site that may change as a function of the upgrade.
5. Conduct meetings with the County to address changes NEC will make in order to prepare for the system implementation, including but not limited to the following:
  - 5.1. Items that must be changed prior to the upgrade.
  - 5.2. Items that do not need to change but may affect the operation or are flagged as questionable, such as:
    - 5.2.1. Pick up groups.
    - 5.2.2. Call coverage patterns.
    - 5.2.3. Call forwarding destinations.
    - 5.2.4. Hunt groups.
    - 5.2.5. Automatic Call Distribution (ACD).
      - 5.2.5.1. ACD group with agents located throughout the County.
      - 5.2.5.2. Remote or home based agent.
      - 5.2.5.3. Interactive Voice Response (IVR) applications.
      - 5.2.5.4. Screen pop applications. Navigator reporting packages.
      - 5.2.5.5. Discuss Interface with the new State of California IVR/ACD system. If the County requires this functionality, NEC will provide all relevant pricing to complete the design of this application.
    - 5.2.6. Review Mobility application.
    - 5.2.7. Review SP350 Soft phone application.
    - 5.2.8. Bridge numbers.
    - 5.2.9. System and station speed dials.
  - 5.3. Conduct Departmental Liaison Sessions
    - 5.3.1. Work with the County's team to educate the departmental liaison regarding the upgraded phone system.
    - 5.3.2. Review changes to the feature operations.

- 5.3.3. Review expectations of installing TDM phones change out to IP telephones.
  - 5.3.4. Review whether any changes of existing telephone locations will be required and ID who pays for the new location. Identify and new requests for additional equipment, such as headsets.
6. Design and document the NEC UM8700 sites including networking architecture, and server configurations.
- 6.1. Document all existing call menus from the Octel voice mail system.
  - 6.2. Work with the County to identify and document any changes to the call menus.
  - 6.3. Prepare a plan to move the existing call menus to the new system.
  - 6.4. Document existing voice mail boxes that are not part of a telephone extension.
  - 6.5. Prepare a plan to move these voice mail boxes to the new system.
  - 6.6. Develop and document the telephone user interface (TUI) to be used in the new voice mail.
  - 6.7. Document and demonstrate new features that the County may be able to use and document this in the new database.
  - 6.8. Review server specifications with the County and gain acceptance for the servers proposed.
  - 6.9. Document that the message store will be in the UM8700.
  - 6.10. Document how voice mail messages will be forwarded to the County's Microsoft Exchange.
  - 6.11. Document a test plan for fail-over.
  - 6.12. Prepare a list of items that NEC would need from the County to implement the UM8700 properly.
7. Design and document the following subsystem including networking interfaces, and server configurations.
- 7.1. AMCOM – E911
    - 7.1.1. Utilize existing County database and documentation for E911 new VoIP telephones.
  - 7.2. Nuance Speech Recognition
    - 7.2.1. Compare and provide a plan to use either the existing Nuance or the speech recognition that is part of the UM8700.
  - 7.3. Consortium Audio Conference
    - 7.3.1. Document and confirm the interface required to work with the upgrade.
  - 7.4. MTS Call Accounting and Bill back

- 7.4.1. Verify and document billing detail, including account codes, and the County's customized applications.
- 7.4.2. Document and confirm the interface required to work with the upgrade.
- 7.4.3. Identify, demonstrate, and document any new features.
- 7.4.4. Document migration to the upgrade of the MTS.
- 7.4.5. Provide necessary equipment specifications that County will be required to supply.
- 7.5. MA4000
  - 7.5.1. Document existing MA4000 configuration.
  - 7.5.2. Design and document migration to the new MA4000.
  - 7.5.3. Design and document MA4000 integration to the County's Active Directory via LDAP.
  - 7.5.4. Identify, demonstrate, and document any new features.
  - 7.5.5. Provide necessary equipment specifications that County will be required to supply.
- 7.6. OW5000 for Microsoft Lync
  - 7.6.1. Design and document to configure OW5000 with Lync Remote Call Control interface.
  - 7.6.2. Design, and document a proof of concept plan for OW5000 and MS Lync.
  - 7.6.3. Provide necessary equipment specifications that County will be required to supply.
- 7.7. Review and approve the edge layer programming including switch configurations, fiber links, layer 2 versus layer 3 roles, and routing protocols for the IP telephone system locations and sites.
  - 7.7.1. The County will provide the PoE Ethernet switches and routers for the VoIP locations.
  - 7.7.2. County will provide the Ethernet switches to connect the NEC SV8500 switches and nodes. Network design must include N+1 redundancy for the Node/Core backbone.
  - 7.7.3. NEC will be required to work with the County and the County will be responsible for designing the voice VLANS. NEC will be responsible for the design for QoS, Multicasting, and routing protocols to support VoIP. The County is expecting NEC will leverage its expertise in VoIP and Quality of Service (QoS) to provide County's IT staff with the necessary information, parameters and other support to configure QoS properly for VoIP.

- 7.7.4. NEC will coordinate and work with the County's IT staff to run "trace" to make sure that all recommended network requirements are in place. This should be done well in advance of deploying any VoIP or IP trunking.
  - 7.7.5. NEC will coordinate and assist County's IT staff in design and deployment to ensure that the deployment is per best practices. QoS can be done by Subnet, VLAN, and COS in the network and the SV8500 systems. It is the County's expectation that the best practices are to include recommended security controls required by the County to protect the network from VoIP traffic.
  - 7.7.6. Review and approve the County's documentation for the logical IP addressing methodology.
  - 7.7.7. Provide NEC's necessary equipment specifications that County will be required to supply in order for NEC to meet end-to-end responsibility.
- 7.8. Identify and document timing to perform the IP Ready Check.
8. Develop and document the software upgrade process for the EOC and the new SV8500s under the Software Assurance Plan.
9. Identify and Document Physical Infrastructure Requirements
- 9.1. Visit all Telecommunication Rooms (TR) and equipment rooms that will house voice and data network equipment. Identify and document any upgrades or clean up required to these rooms to support the Final System Design.
  - 9.2. Identify and document any augmentations to the inside cable plant (ISP) and to the outside cable plant (OSP) required in support of the Final System Design.
  - 9.3. Identify and document any augmentations to the wide area network for site-to-site connectivity including any routers requirements.
  - 9.4. Prepare Visio diagram for each equipment room detailing power/circuit type and location of circuits, racks, subsystems, and UPS devices.
  - 9.5. Prepare earthquake documentation and drawings for each equipment room indicating what precautions NEC has taken for earthquake protection.
10. Prepare Training Plan based on final contracted design specification/ Bill of Materials.
- 10.1. Prepare train the trainer plan to include the following considerations.
    - 10.1.1. Training Schedule.
    - 10.1.2. Class length.
    - 10.1.3. IP Phones.
    - 10.1.4. New voice mail and unified messaging features.
    - 10.1.5. Automatic Call Distribution (ACD).

- 10.1.6. ACD Reporting Package.
  - 10.1.7. ACD supervisor.
  - 10.1.8. E-911.
  - 10.1.9. MTS.
  - 10.1.10. Training material.
- 10.2. Prepare a technical and administration plan to include at least the following points.
- 10.2.1. Schedule of SV8500 classes.
  - 10.2.2. Providing on-site training for:
    - 10.2.2.1. OW5000.
    - 10.2.2.2. UM8700
    - 10.2.2.3. MA4000.
    - 10.2.2.4. MTS.
    - 10.2.2.5. AMCOM.

11. Develop Detailed Implementation Plan and Schedule

- 11.1. As part of the Final System Design process, NEC shall develop a detailed plan and schedule for implementation of the voice network. For purposes of developing the detailed implementation plan and schedule, assume the award for implementation of the new voice network will be made by July 30, 2013. The detailed implementation plan shall include, but not be limited to, the following plan elements:
- 11.1.1. Preparation of voice System equipment.
  - 11.1.2. Installation, configuration, testing, and cutover of SV 8500 equipment by equipment room.
  - 11.1.3. Installation, configuration, testing, and cutover of the ACD/IVR equipment by equipment room.
  - 11.1.4. Installation, configuration, testing, and cutover of SR-MGC equipment by equipment room.
  - 11.1.5. Work cooperatively with County's IT to complete testing, and cutover of LAN edge equipment by equipment room.
  - 11.1.6. Installation, configuration, testing, and cutover of NEC UM8700 equipment by equipment room.
  - 11.1.7. Testing, and cutover of existing UPS/Rectifiers equipment by equipment room.

- 11.1.8. Re-termination and/or Installation, configuration, testing, and cutover of all subsystems' equipment.
- 11.1.9. Testing procedures for least cost routing.
- 11.1.10. Testing of subnets and voice VLANs.
- 11.1.11. Definition, configuration, and testing of VoIP QoS.
- 11.1.12. Integration of the existing DNS and DHCP systems.
- 11.1.13. Working with the County for the buildings requiring additional bandwidth for VoIP.
- 11.1.14. Development of test cases and procedures for testing voice System as a whole.
- 11.1.15. Scheduling of staff training including schedule of courses and staff participating in each course.
- 11.1.16. Knowledge transfer points during the implementation process.
- 11.2. Helpdesk. Design and document helpdesk process during the cut-over.
- 12. Develop a mutually agreeable change management process with the County of Santa Barbara.
- 13. Voice Network Monitoring
  - 13.1. Develop and recommend a plan to monitor the County's VoIP network.
- 14. Post Installation Warranty and Maintenance
  - 14.1. Develop a plan to trace VoIP trouble shooting.
  - 14.2. Identify tools, processes and methodology to minimize service interruption.
  - 14.3. Develop a plan to work with the County's data networking team.
  - 14.4. Identify and document voice network team.
  - 14.5. Identify and document network engineer.
  - 14.6. Propose a plan to keep these team members current on technology and their training requirements.
- 15. Prepare Best and Final Pricing.
  - 15.1. Provide best and final pricing and functionality information based upon outcome of this Statement of Work.

- 15.2. Agree to incorporate the Final Design Equipment Pricing and NEC's response to the Final Design Equipment Pricing in the Existing NEC Agreement or a new Master Purchase Agreement.
  - 15.3. Negotiate a new Master Purchase Agreement or update the existing NEC Agreement with the County.
  - 15.4. Document an escalation chart for during implementation and post installation.
16. Final System Design Price and Schedule
- 16.1. NEC agrees to perform the work and provide the Deliverables within this Statement of Work for a total price of \$82,442 including all expense.

Table I shows breakdown of Phase I price based upon NEC's RFP response.

<b>Table I NEC RFP Submittal of Professional Design Services and Project Management</b>		
<i>RFP Ref #</i>	<i>Description</i>	<i>Price</i>
4	Labor for Professional Services (design, engineering,)	\$30,077
5	Labor for Professional Services (Project Management) @10% of Total	\$8,253
41	Unified Communications Design Costs	\$7,334
42	Unified Communications Project Management @10% of Total	\$972
47	MTS Call Accounting System Design Costs @10% of Total	\$7,701
48	MTS Call Accounting Project Management @10% of Total	\$632
52	Amcom 911 Data Base Collection and Design	\$9,381
53	Amcom 911 Project Management @10% of Total	\$463
69	Network Assessment Main Sites	\$14,447
70	Network Assessment Remote Sites	\$3,182
	<b>Total</b>	<b>\$82,442</b>

Table II shows Milestone Tasks and Payment Schedule for Phase 1. The County expects the work under this Phase 1-Statement of Work to be completed by July 31, 2013 or earlier.

<b>Table II Milestone Tasks and Payment Schedule</b>			
<i>Ref #</i>	<i>Milestone Tasks</i>	<i>Completion Date (To be filled by NEC)</i>	<i>Progress payment Percentage</i>
1	Upon execution of the Statement of Work		30%
2	Voice Network Design complete, accepted, and delivered to the County of Santa Barbara		50%
3	Upon submission date of NEC's response to the County of Santa Barbara Updated Pricing		20%



### Exhibit A.4 - Installation Sites

Table I lists sites to be upgrade from NEC 2400 to SV8500. For purposes of Cutover and Acceptance the list of components specified for locations in Table I are referred to as "SV8500 Systems."

<b>Table I – SV8500 NEC 2400 IPX Location Sites and Pricing</b>			
<i>Ref. #</i>	<i>Building</i>	<i>Site ID</i>	<i>Address</i>
1	Calle Real	S-1	4436 Calle Real, Santa Barbara
2	Betteravia	S-2	2125 S. Centerpointe Parkway, Santa Maria
3	Foster Road	S-3	815-A West Foster Road, Santa Maria
4	Cook Street Bldg. G	S-4	312 E. Cook Street, Santa
5	Civic Center	S-5	115 E. Civic Center Plaza, Lompoc
6	PHD/Social	S-6	301 North R Street, Lompoc
7	Solvang	S-7	1745 Mission Drive, Solvang
8	Courthouse	S-8	1100 Anacapa Street, Santa Barbara
9	Los Prietos Boys Camp	S-10	3900 Paradise Road, Solvang
10	WRC/BSC	S-15	1410 S. Broadway, Santa Maria

Table II lists sites to be replaced from NEC 2000 to SRM-GC. For purposes of Cutover and Acceptance the list of components specified for locations in Table II are referred to as "SRG-MC Systems."

<b>Table II – SRG-MC NEC 2000 IPS Locations Upgraded to NEC Survivable Remote Media Gateway Controllers</b>			
<i>Ref. #</i>	<i>Building</i>	<i>Site ID</i>	<i>Address</i>
1	APCD	S-9	260 N. San Antonio Rd., Santa Barbara
2	APCD Cook	S-9A	301 Cook Street, Suite L, Santa Maria
3	De La Vina	S-11	2034 De La Vina Street, Santa Barbara
4	Juvenile Probation	S-14	4500 Hollister Ave., Santa Barbara
5	B Street	S-16	117 North B Street, Lompoc
6	Burton Mesa	S-18	3500 Harris Grade Rd., Lompoc
7	Carmen Lane	S-19	212 Carmen Lane, Santa Maria

Final Design will determine change in any SRG-MC Locations.

Table III lists sites to be replaced from NEC DRUs to direct IP sites.

For purposes of Cutover and Acceptance the list of components specified for locations in Table III are referred to as "DRU Systems." Final Design will determine SRG-MC Locations, if any.

<b>Table III - DRUs NEC Digital Remote Unit (DRU) Sites Replaced with VoIP Telephones</b>			
<i>Ref. #</i>	<i>DRU Site</i>	<i>Origination Site</i>	<i>DRU Address</i>
1	Dept. of Child Support Services	S-1	201 S Miller St., Santa Maria
2	Probation	S-1	501 W. Morrison, Santa Maria
3	Women's Health Care Ctr. Delete	S-2	116 S Palisades, Santa Maria
4	Retirement	S-2	2400 Professional Pky., Santa Maria
5	Waller Park	S-3	300 Goodwin Road, Santa Maria
6	IVFP	S-4	6504 Trigo Road, Goleta
7	Sheriff Training	S-4	360 Camino Del Remedio, Santa Barbara
8	Sheriff SOD	S-4	4564 Hollister Ave., Santa Barbara
9	Sheriff Coroner	S-4	66 S. San Antonio Road, Santa Barbara
10	Tajiguas Landfill	S-4	14470 Calle Real, Santa Barbara
11	Animal Services	S-4	5473 Overpass Road, Santa Barbara
12	Road Yard	S-5	2010 Sweeney Road, Lompoc
13	Animal Services	S-5	1501 W. Central Ave., Lompoc
14	Veterans' Building	S-5	100 E. Locust Street, Lompoc
15	Fire	S-7	1430 Mission Drive, Solvang
16	Cachuma Lake	S-7	2225 Highway 154, Santa Barbara
17	Buellton Fire/Police	S-7	168 W. Highway 246, Buellton
18	Retirement	S-8	3916 State Street, Santa Barbara
19	WRC	S-8	130 E. Ortega, Santa Barbara
20	Carp Health Care Center	S-8	931 Walnut Ave., Carpinteria
21	Franklin Health Care Ctr.	S-8	1136 E. Montecito St., Santa Barbara
22	First 5	S-8	1306 Santa Barbara St., Santa Barbara
23	First 5	S-2	218 W. Carmen Lane, Santa Maria
24	Sheriff	S-7	Santa Ynez Airport, Santa Ynez

For purpose of Cutover, Subsystems are defined as: UM8700, MA4000, UCE, Amcom and MTS.

<b>Table IV - Subsystems</b>	
<b>Ref. #</b>	<b>Subsystem</b>
1	UM8700
2	MA4000
3	OW5000
4	Amcom
5	MTS
6	IVR
7	Software Assurance/Maint

## Exhibit A.5 - List of County Staff

1. Project Sponsor  
Jennifer Slayman  
Assistant Director  
805-568-2606
2. Telecom Services and overall County Project Manager
  - 2.1. Carl Thornton  
805-681-5581  
[cthornnton@co.santa-barbara.ca.us](mailto:cthornnton@co.santa-barbara.ca.us)
  - 2.2. Stacy Liberts  
805-681-5587  
[sliberts@co.santa-barbara.ca.us](mailto:sliberts@co.santa-barbara.ca.us)
3. Local Area Network
  - 3.1. Virginia Butterfield  
805-568-2607  
[VButterfield@co.santa-barbara.ca.us](mailto:VButterfield@co.santa-barbara.ca.us)
  - 3.2. Stephen Crafton  
805-560-1013  
[scrafton@co.santa-barbara.ca.us](mailto:scrafton@co.santa-barbara.ca.us)
4. Wide Area Network
  - 4.1. Jason Poley  
[jpoley@co.santa-barbara.ca.us](mailto:jpoley@co.santa-barbara.ca.us)  
805-568-2680
  - 4.2. Carl Thornton
  - 4.3. Virginia Butterfield
5. Microsoft Lync  
Rob Leaver  
805-568-3277  
[rleaver@co.santa-barbara.ca.us](mailto:rleaver@co.santa-barbara.ca.us)
6. County's Legal Counsel  
Brian R. Pettit  
Deputy County Counsel  
(805) 568-2950  
[bpettit@co.santa-barbara.ca.us](mailto:bpettit@co.santa-barbara.ca.us)
7. County's Procurement  
Mark Masoner  
805-568-2692  
[mmasone@co.santa-barbara.ca.us](mailto:mmasone@co.santa-barbara.ca.us)
8. County's Consultant  
Zahid Masood, Z Consulting Group  
818-203-4400  
[zmasood@z-consulting.net](mailto:zmasood@z-consulting.net)

### **Exhibit A.6 - List of NEC Subcontractors**

NEC has not identified any requirements for subcontracted work as of the Effective Date of this Agreement. If subcontractor requirements are identified during the course of Phase II, NEC agrees to provide the County with a list of such subcontractors, as they are identified.

## **Exhibit A.7 – Additional Terms and Conditions**

### **ADD TO OWNERSHIP OF DOCUMENTS.- SECTION 11, PARAGRAPH 2.**

The County acknowledges that the products provided by NEC hereunder are commercial in nature and all intellectual property rights for those products are owned exclusively by NEC or its licensors, notwithstanding any other provision of this Agreement to the contrary, all pre-existing practices, procedures, materials, development tools and reusable components, including, but not limited to the NEC's or its vendors' library of generic, reusable software code, procedures, manuals and business practices as well as any modification or extension of them are and remain the sole property of the NEC and the County will have no interest in or claim to them except to the limited extent that may be necessary to exercise its rights under this Agreement. Pre-existing practices, procedures, materials, development tools and reusable components include any routines, libraries, tools, methodologies, processes or technologies created, adapted or used by the NEC in its business generally, including generic, reusable software code components and related documentation which contain the basic components of NEC's software architecture and which are used in most software projects delivered by the NEC plus all associated intellectual property rights. In addition, notwithstanding any provision of this Agreement to the contrary, NEC is free to use any ideas, concepts or know-how developed or acquired by NEC during the performance under this Agreement, to the extent obtained and retained by NEC's personnel as impressions and general learning.

To the extent that the products or services provided hereunder contain, embody or are based on, patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned or controlled by NEC or the applicable manufacturer, NEC, or the manufacturer, respectively shall continue to be the sole owner of all intellectual property rights in such products and services.

### **ADD TO TERMINATION– SECTION 17 (A)(2).**

Provided that the defaulting party had been given thirty (30) days prior written notice of the default and failed to cure the default within such thirty (30) day period.

### **LIMITATION OF LIABILITY.**

EXCEPT FOR INDEMNITY OBLIGATIONS UNDER EXHIBIT C BELOW; OR AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, OR FOR EITHER PARTY'S LIABILITIES ARISING FROM USE OF INTELLECTUAL PROPERTY BEYOND THE SCOPE PERMITTED BY THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES EXCEEDING THE FEES PAID OR OWED TO THE OTHER PARTY HEREUNDER; AND NEITHER PARTY SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE), ARISING OUT OF THIS AGREEMENT, (INCLUDING ANY DAMAGES ARISING UNDER ANY CLAIM OR NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY), EVEN IF THE PARTY INCURRING SUCH DAMAGES HAS ADVISED THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

### **SERVICES WARRANTY.**

CONTRACTOR represents and warrants that all Services provided to the COUNTY pursuant to this Agreement shall be performed by competent personnel, with professional diligence and skill, consistent

with industry standards, and will conform in all material respects to the specifications and requirements set forth, and for the period stated or incorporated herein.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND THE APPLICABLE ORDER, CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT AND/OR SERVICES COVERED HEREUNDER, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ALL WARRANTIES RELATED TO THIRD PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE NOT PROVIDED HEREUNDER ARE EXPRESSLY EXCLUDED.

**TITLE, RISK OF LOSS, AND FINAL RESTING PLACE**

Costs for installing all System Components in their permanent location or Final Resting Place will be borne by NEC. Title and risk of Loss for any System Component(s) will not pass to the County until the System Component(s) are in their Final Resting Place.

## Exhibit A.8 – Existing Maintenance Contract

**NEC** NEC Corporation of America

June 25, 2013

Carl Thornton  
County of Santa Barbara  
4568 Calle Road, Building C  
Santa Barbara, CA 93110

Customer: 100006862  
NEC Contract: A2756S8 - WE0662  
COSB Contract: BC-04-167

Dear Mr. Thornton:

The six month renewal term of the maintenance agreement on your NEC communications equipment is due to expire on June 30, 2013. The product information and renewal rate for the upcoming term is detailed on the attached Schedule A – Schedule of Maintenance Coverage.

Please accept this letter as notification of the renewal of maintenance coverage effective July 1, 2013 through June 30, 2014.

NEC appreciates your past business and we look forward to fulfilling your future communications needs.

Sincerely,

*Barbara McKennan*  
Service Solution Specialist  
NEC Corporation of America  
Ph: 214-262-6435  
E-Fx: 214-614-4998  
[barbara.mckennan@necam.com](mailto:barbara.mckennan@necam.com)

cc: [lori.meyerov@necam.com](mailto:lori.meyerov@necam.com)

REVISED 06252013

6535 N State Highway 161 ■ Irving, TX 75039 ■ 214-262-6000 ■ [www.necam.com](http://www.necam.com)





**EXHIBIT B**

**PAYMENT ARRANGEMENTS**

**Periodic Compensation at Selected Milestones (with attached Schedule of Fees)**

A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$ **2,583,540**. This not-to-exceed amount includes a contingency fund of \$234,867 for potential change orders that may be requested and approved in writing by the Director of General Services or designee in accordance with Section 6 of the Phase II – Statement of Work.

B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A**. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.

C. Upon completion of the work for each milestone and/or delivery to COUNTY of item(s) specified below, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed in accomplishing each milestone. These invoices or certified claims must cite the assigned Board Agreement Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and/or item(s) delivered and if found to be satisfactory and within the cost basis of **Attachment B1**, shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.

Percentage of Each Site System/Subsystem or Maximum Amount Chargeable	Milestone Description
85%	<b>Upon Cutover of each Site, SV8500 System or Sub- System</b>
15%	<b>Upon System Acceptance</b>

The final milestone payment above shall not be made until all services have been completed and item(s) as specified in **EXHIBIT A** have been delivered and found to be satisfactory.

D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

### Attachment B.1

The County shall pay per the following schedule.

Table I lists sites to be upgrade from NEC 2400 to SV8500. For purposes of Cutover and Acceptance the list of components specified for locations in Table I are referred to as "SV8500 Systems."

<b>Table I SV8500 NEC 2400 IPX Location Sites and Pricing</b>					
<i>Ref. #</i>	<i>Building</i>	<i>Site ID</i>	<i>Address</i>	<i>Cost</i>	<i>Cutover Payment</i>
1	Calle Real	S-1	4436 Calle Real, Santa Barbara	\$190,343	\$161,791
2	Betteravia	S-2	2125 S. Centerpointe Parkway, Santa Maria	\$145,799	\$123,929
3	Foster Road	S-3	815-A West Foster Road, Santa Maria	\$83,978	\$71,381
4	Cook Street Bldg. G	S-4	312 E. Cook Street, Santa	\$85,519	\$72,691
5	Civic Center	S-5	115 E. Civic Center Plaza, Lompoc	\$94,320	\$80,172
6	PHD/Social	S-6	301 North R Street, Lompoc	\$71,279	\$60,587
7	Solvang	S-7	1745 Mission Drive, Solvang	\$87,856	\$74,678
8	Courthouse	S-8	1100 Anacapa Street, Santa Barbara	\$174,045	\$147,938
9	Los Prietos Boys Camp	S-10	3900 Paradise Road, Solvang	\$62,535	\$53,155
10	WRC/BSC	S-15	1410 S. Broadway, Santa Maria	\$122,401	\$104,041

Table II lists sites to be replaced from NEC 2000 to SRM-GC. For purposes of Cutover and Acceptance the list of components specified for locations in Table II are referred to as "SRG-MC Systems."

Final Design will determine change in any SRG-MC Locations.

<b>Table II – SRG-MC NEC 2000 IPS Locations Upgraded to NEC Survivable Remote Media Gateway Controllers</b>					
<i>Ref. #</i>	<i>Building</i>	<i>Site ID</i>	<i>Address</i>	<i>Cost</i>	<i>Cutover Payment</i>
1	APCD	S-9	260 N. San Antonio Rd., Santa Barbara	\$24,687	\$20,984
2	APCD Cook	S-9A	301 Cook Street, Suite L, Santa Maria	\$7,163	\$6,089
3	De La Vina	S-11	2034 De La Vina Street, Santa Barbara	\$18,275	\$15,534
4	Juvenile Probation	S-14	4500 Hollister Ave., Santa Barbara	\$30,677	\$26,075
5	B Street	S-16	117 North B Street, Lompoc	\$25,997	\$22,097
6	Burton Mesa	S-18	3500 Harris Grade Rd., Lompoc	\$12,101	\$10,286
7	Carmen Lane	S-19	212 Carmen Lane, Santa Maria	\$16,985	\$14,437

Table III lists sites to be replaced from NEC DRUs to direct IP sites.

For purposes of Cutover and Acceptance the list of components specified for locations in Table III are referred to as "DRU Systems." Final Design will determine DRU locations, if any.

<b>Table III - DRUs</b>					
<b>NEC Digital Remote Unit (DRU) Sites Replaced with VoIP Telephones</b>					
<i>Ref. #</i>	<i>DRU Site</i>	<i>Origination Site</i>	<i>DRU Address</i>	<i>Cost</i>	<i>Cutover Payment</i>
1	Dept. of Child Support Services	S-1	201 S Miller St., Santa Maria	\$24,279	\$20,637
2	Probation	S-1	501 W. Morrison, Santa Maria	\$5,845	\$4,968
3	Women's Health Care Ctr. Delete	S-2	116 S Palisades, Santa Maria	\$17,310	\$14,714
4	Retirement	S-2	2400 Professional Pky., Santa Maria	\$10,459	\$8,890
5	Waller Park	S-3	300 Goodwin Road, Santa Maria	\$7,205	\$6,124
6	IVFP	S-4	6504 Trigo Road, Goleta	\$12,483	\$10,611
7	Sheriff Training	S-4	360 Camino Del Remedio, Santa Barbara	\$11,656	\$9,908
8	Sheriff SOD	S-4	4564 Hollister Ave., Santa Barbara	\$14,421	\$12,258
9	Sheriff Coroner	S-4	66 S. San Antonio Road, Santa Barbara	\$10,378	\$8,821
10	Tajiguas Landfill	S-4	14470 Calle Real, Santa Barbara	\$7,118	\$6,050
11	Animal Services	S-4	5473 Overpass Road, Santa Barbara	\$10,116	\$8,599
12	Road Yard	S-5	2010 Sweeney Road, Lompoc	\$6,950	\$5,908
13	Animal Services	S-5	1501 W. Central Ave., Lompoc	\$9,461	\$8,042
14	Veterans' Building	S-5	100 E. Locust Street, Lompoc	\$6,116	\$5,199
15	Fire	S-7	1430 Mission Drive, Solvang	\$12,521	\$10,643
16	Cachuma Lake	S-7	2225 Highway 154, Santa Barbara	\$7,174	\$6,098
17	Buellton Fire/Police	S-7	168 W. Highway 246, Buellton	\$10,077	\$8,565
18	Retirement	S-8	3916 State Street, Santa Barbara	\$12,194	\$10,365
19	WRC	S-8	130 E. Ortega, Santa Barbara	\$8,595	\$7,306
20	Carp Health Care Center	S-8	931 Walnut Ave., Carpinteria	\$12,796	\$10,877
21	Franklin Health Care Ctr.	S-8	1136 E. Montecito St., Santa Barbara	\$13,125	\$11,156
22	First 5	S-8	1306 Santa Barbara St., Santa Barbara	\$8,843	\$7,517
23	First 5	S-2	218 W. Carmen Lane, Santa Maria	\$7,584	\$6,446
24	Sheriff	S-7	Santa Ynez Airport, Santa Ynez	\$9,749	\$8,287

Table IV lists subsystems. For purpose of Cutover, Subsystems are defined as: UM8700, MA4000, UCE, Amcom and MTS.

<b>Table IV – Subsystems</b>			
<i>Ref. #</i>	<i>Subsystem</i>	<i>Cost</i>	<i>Cutover Payment</i>
1	UM8700	\$323,143	\$274,672
2	MA4000	\$24,000	\$20,400
3	OW5000	\$126,635	\$107,640
4	Amcom	\$77,465	\$65,845
5	MTS	\$13,714	\$11,657
6	IVR	\$40,944	\$34,802
7	Software Assurance/Maint	\$232,357	\$197,503

The final payment of \$352,300.89, which represents the 15% of the total agreement amount for each site system or subsystem withheld upon Cutover shall not be made until all services have been completed and item(s) as specified in **EXHIBIT A** have been delivered and accepted by the County.

## EXHIBIT C

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance

#### INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees (hereinafter County Indemnitees) from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the active negligence or willful misconduct of the COUNTY. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a soft copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. NEC agrees that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTOR shall require

all subcontractors to furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to CONTRACTOR's commencement of services under this Agreement. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY, specifically applicable to CONTRACTOR, or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to consider such amendment in good faith and will execute any such amendment within thirty (30) days of CONTRACTOR's acceptance of the amendment or modification, which acceptance will not be unreasonably withheld.

**EXHIBIT D  
YEAR 2000 DATE CHANGE COMPLIANCE WARRANTY  
FOR GOODS AND SERVICES**

**---- INTENTIONALLY OMITTED ----**

**REMOVED  
March 1, 2004**

**THIS AGREEMENT DOES NOT INCLUDE EXHIBIT D**



## EXHIBIT E

### HIPAA BUSINESS ASSOCIATE AGREEMENT

#### 1. Use and Disclosure of Protected Health Information

Except as otherwise provided in this Exhibit, the Contractor may use or disclose Protected Health Information ("PHI")<sup>1</sup> to perform functions, activities or services for or on behalf of the County, as specified in the underlying agreement, provided that such use or disclosure does not violate HIPAA or other law. The uses and disclosures of PHI may not exceed the limitations applicable to the County under the regulations except as authorized for management, administrative or legal responsibilities of the Contractor. PHI includes without limitation "Electronic Protected Health Information" ("EPHI")<sup>2</sup>.

#### 2. Requirement to Train Own Employees

The Contractor has a responsibility to provide effective training for all members of its workforce (including its own employees, management, staff, volunteers and independent contractors) who will or who are likely to have any access to or exposure to PHI or EPHI. Members of the Contractor's workforce who use, disclose, handle, view, process, distribute, access, audit, create, receive or have any exposure to PHI or EPHI must receive training on both the HIPAA Privacy Rule and the HIPAA Security Rule. Privacy Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.530 (b). Security Rule Training shall meet the requirements of 45 Code of Federal Regulations Section 164.308 (a)(5).

#### 3. Further Disclosure of PHI

The Contractor shall not use or further disclose PHI other than as permitted or required by the underlying Agreement, or as required by law.

#### 4. Safeguarding PHI

The Contractor shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the underlying Agreement. Contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI that Contractor creates, receives, maintains or transmits on behalf of County. The actions taken by the Contractor to safeguard EPHI shall include, but may not be limited to:

- a. Encrypting EPHI that it stores and transmits;
- b. Implementing strong access controls, including physical locks, firewalls, and strong passwords;
- c. Using antivirus software that is upgraded regularly;
- d. Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and
- e. Conducting periodic security training.

<sup>1</sup> "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

<sup>2</sup> "Electronic Protected Health Information" means Protected Health Information, which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

#### 5. Unauthorized Use or Disclosure of PHI

The Contractor shall report to the County any use or disclosure of the PHI not provided for by the underlying Agreement or otherwise in violation of the Privacy Rule or Security Rule. Contractor shall

report to County any security incidents within 10 days of becoming aware of such incidents. For purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.

#### 6. Agents and Subcontractors of the Business Associate

The Contractor shall ensure that any agent, including a subcontractor, to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of the County, shall comply with the same restrictions and conditions that apply through the underlying Agreement to the Contractor with respect to such information. The Contractor shall ensure that any agent to whom it provides PHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such PHI. Contractor shall not use subcontractors or agents, unless it receives prior written consent from County.

#### 7. Access to PHI

At the request of the County, and in the time and manner designated by the County, the Contractor shall provide access to PHI in a Designated Record Set to an Individual or the County to meet the requirements of 45 Code of Federal Regulations Section 164.524.

#### 8. Amendments to Designated Record Sets

The Contractor shall make any amendment(s) to PHI in a Designated Record Set that the County directs or at the request of the Individual, and in the time and manner designated by the County in accordance with 45 Code of Federal Regulations Section 164.526.

#### 9. Documentation of Uses and Disclosures

The Contractor shall document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by Contractor and its agents or subcontractors for at least six years prior to the request, but not before the compliance date of the Privacy Rule.

#### 10. Accounting of Disclosures

The Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with 45 Code of Federal Regulations Section 164.528, to permit the County to respond to a request by the Individual for an accounting of disclosures of PHI in accordance with 45 Code of Federal Regulations Section 164.528.

#### 11. Records Available to Covered Entity and Secretary

The Contractor shall make available records related to the use, disclosure, security and privacy protection of PHI received from the County, or created or received by the Contractor on behalf of the County, to the County or to the Secretary of the United State Department of Health and Human Services for purposes of investigating or auditing the County's compliance with the HIPAA privacy and security regulations, in the time and manner designated by the County or the Secretary.

## 12. Destruction of PHI

a. Upon termination of the underlying Agreement for any reason, the Contractor shall:

- (1) Return all PHI received from the County, or created or received by the Contractor on behalf of the County required to be retained by the Privacy Rule; or
- (2) Return or destroy all other PHI received from the County, or created or received by the Contractor on behalf of the County.

This provision also shall apply to PHI in possession of subcontractors or agents of the Contractor. The Contractor, its agents or subcontractors shall retain no copies of the PHI. However, Contractor, its agents or subcontractors shall retain all protected information throughout the term of the underlying Agreement and shall continue to maintain the information required under Section 9 of this Exhibit for a period of six years after termination of the underlying Agreement.

b. In the event the Contractor determines that returning or destroying the PHI is not feasible, the Contractor shall provide the County notification of the conditions that make return or destruction not feasible. If the County agrees that the return of the PHI is not feasible, the Contractor shall extend the protections of this Exhibit to such PHI and limit further use and disclosures of such PHI for so long as the Contractor, or any of its agents or subcontractors, maintains such PHI.

## 13. Amendments

The Parties agree to take such action as is necessary to amend the underlying Agreement as necessary for the County to comply with the requirements of the Privacy Rule and its implementing regulations.

## 14. Mitigation of Disallowed Uses and Disclosures

The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the underlying Agreement or the Privacy Rule.

## 15. Termination of Agreement

The County shall terminate the underlying Agreement upon knowledge of a material breach by the Contractor of which the Contractor fails to cure.

## 16. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those in the Privacy Rule.

## 17. Interpretation

Any ambiguity in this Exhibit shall be resolved to permit County to comply with the Privacy Rule and Security Rule.

