

## **MEMORANDUM OF UNDERSTANDING FOR COURT TELECOMMUNICATION SERVICES**

This Memorandum of Understanding is made and entered into as of July 1, 2016 (this "**Memorandum**"), and is between the Superior Court of California, County of Contra Costa (the "**Court**") and the County of Contra Costa, a political subdivision of the State of California (the "**County**").

### **RECITALS**

- A.** The Lockyer-Isenberg Trial Court Funding Act of 1997, commonly referred to as AB233 (the "**Act**"), relieved counties of their previous responsibility to fund court operations, as defined in Government Code Section 77003 and Rule 10.810 of the California Rules of Court. The State of California subsequently assumed responsibility for funding court operations.
- B.** Prior to enactment of the Act, the County Department of Information Technology provided the Court with telecommunication, voice, and data transmission utility services, and telephone and voice line installation, configuration, and repair services.
- C.** The Court desires to continue receiving telecommunication, voice, and data transmission utility services, and telephone and voice line installation, configuration, and repair services from the County, and the County desires to continue providing those services to the Court, and the parties are therefore entering into this Memorandum pursuant to Government Code section 77212.
- D.** The parties do not intend this Memorandum to expand, broaden, reduce or limit their respective rights, duties, or obligations under California law.
- E.** The parties desire that the Telecommunication Services that are described in this Memorandum be carried out in accordance with the terms of this Memorandum.

The parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, therefore agree as follows:

### **AGREEMENT**

#### **1. SERVICES**

**1.1 Scope of Services.** Subject to the terms of this Memorandum, the County will provide the services set forth on Exhibit A attached hereto and incorporated herein (the "**Telecommunication Services**") at the court locations listed on Exhibit B attached hereto and incorporated herein (the "**Court Buildings**"). In accordance with Government Code Sections 77212(b), if the County elects to discontinue a Telecommunication Service that is vital to the Court, the County will cooperate with the Court to ensure the service is available to the Court from the County or another entity.

**1.2 Compensation.** The amounts payable for the services provided pursuant to this Memorandum are subject to the provisions of the Act and Rule 10.810 of the California Rules of Court and are determined as follows:

(a) Subject to Section 1.2(b) below, the Court shall pay the County for Telecommunication Services in accordance with the payment terms set forth in Exhibit C attached hereto and incorporated herein. Pursuant to Government Code Section 77212(a), the rates charged by the County may not exceed the cost of providing similar services to County departments or to special districts.

(b) The rates set forth on Exhibit C attached hereto are for the first year that this Memorandum is in effect and will be adjusted to reflect increases in the County's direct costs of providing the Telecommunication Services. The County may propose a change to the rates payable for one or more Telecommunication Services by providing a written notice to the other party (a "**Notice of Adjustment**"). A Notice of Adjustment must be issued on or before April 1 to be effective on July 1 of the following year (July 1 to June 30, being referred to herein as a "**Fiscal Year**"); provided, however, if as a result of collective bargaining a cost of living adjustment (a "**COLA**") is granted retroactively and the COLA affects the cost of providing a particular Telecommunication Service, then (i) the rate payable for that particular Telecommunication Service, as the case may be, will be adjusted retroactively (such adjustment, a "**COLA Adjustment**") and the new rate will be effective as of the effective date of the COLA Adjustment, and (ii) a Notice of Adjustment will be issued as soon as reasonably practicable. Except in the case of a COLA Adjustment, following the issuance of a Notice of Adjustment, the parties shall use good faith efforts to agree on the rates to be charged for Telecommunication Services, as the case may be, prior to the time a termination notice must be issued in accordance with Section 2.2 below.

**1.3 Indirect Costs.** The County may include indirect costs in the rates payable under this Memorandum. Pursuant to Government Code Section 77212(d)(1), the amount of indirect and overhead costs being charged hereunder for Telecommunication Services and the method of calculating the indirect and overhead costs are set forth on Exhibit C attached hereto. The County's indirect costs may not include items that are not otherwise allowable as part of "court operations," as defined in Government Code Section 77003 and Rule 10.810 of the California Rules of Court.

**1.4 Manner of Payment.** The County shall invoice the Court for Telecommunication Services monthly in arrears. The County's invoices shall identify the services provided and the applicable rates. The Court will pay invoices within 30 days of receipt. Invoices and payments shall be sent to the respective addresses set forth in Section 5.6 below.

**1.5 Dual Service Provider.** When an employee of the County provides the same or similar services to both the Court and the County, the County will track the employee's time through the County Department of Information Technology Customer

Billing System (CBS) labor tracking system. The CBS will determine how much of the employee's time is spent providing services to the Court and how much is spent providing services to the County. The CBS labor tracking system will serve as the basis for the allocation of the employee's costs between the parties.

**1.6** Verification. The Court may request that the County provide additional back-up information regarding the Telecommunication Services provided and the rates charged. The County shall provide the additional information to the Court within thirty (30) days of receipt of the request. In accordance with Government Code Section 77212, the Judicial Council may audit the County's figures to ensure compliance with Government Code Section 77212 and the reasonableness of the figures. This Memorandum is subject to examination and audit by the State Auditor for a period of three (3) years after final payment.

**1.7** Cooperation. The Court may notify the County in writing that a particular outside vendor will be used in conjunction with the delivery of a Telecommunication Service that the Court is to receive from the County. Upon receipt of the vendor's identity, the County will cooperate with the vendor and advise the Court of any cooperation or coordination problems that arise.

## **2. TERM/TERMINATION**

**2.1** Term. This Memorandum is effective as of the date set forth in the introductory paragraph and will remain in effect until terminated by either party in accordance with Section 2.2 below.

**2.2** Termination of this Memorandum. The parties may terminate this Memorandum at any time by written mutual agreement. Subject to the requirements of Government Code Section 77212, either party may terminate this Memorandum at any time by giving the other party written notice as specified in Section 2.3 below.

**2.3** Termination of a Service. Subject to Section 1.1 above, either party may terminate a service that is provided pursuant to this Memorandum by giving the other party written notice. In accordance with Government Code Sections 77212(b) and 77212(c), a notice terminating a service that is given on or before April 1 will be effective on the first day of the succeeding Fiscal Year, or such other date that is mutually agreeable to the parties.

**2.4** Survival. The rights and obligations of the parties to this Memorandum, which by their nature should survive the termination or expiration of this Memorandum, shall remain in effect after the termination or expiration of this Memorandum, including any section of this Memorandum that states it shall survive such termination or expiration.

### **3. DISPUTE RESOLUTION**

**3.1 Continuation of Services.** If the County and the Court disagree as to any matter governed by this Memorandum, this Section 3 will govern the dispute resolution process. Until the dispute is resolved, the County will continue to provide the service that is the subject of the dispute and the Court will continue to pay for the service in accordance with the terms of this Memorandum.

**3.2 Request for Meeting.** If after forty five (45) days, the Court and the County cannot resolve a dispute, either party may give the other party a written request for a meeting between the Court Executive Officer and the County Administrator for the purpose of resolving the dispute. Once a meeting is requested, the parties shall work together in good faith to cause the meeting to occur within ten (10) business days of the receipt of the request. If the meeting fails to occur or fails to resolve the disagreement, nothing in this Memorandum precludes the parties from exercising their legal remedies.

**3.3 Resolution of Disputes.** If a dispute between the parties regarding the interpretation or performance of this Memorandum is not resolved under Section 3.2 above, the parties may submit the dispute to non-binding mediation to be conducted in the City of Martinez.

**3.4 Jurisdiction and Venue.** If a dispute between the parties regarding the interpretation or performance of this Memorandum is not resolved under Section 3.3 above, either party may bring legal action to interpret or enforce this Memorandum in the Superior Court of California, County of Contra Costa.

### **4. INDEMNIFICATION**

**4.1 County Indemnification.** The County shall indemnify and hold harmless the Court for the County's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, arising out of the willful misconduct or the negligent acts, errors or omissions of the County in the performance of its obligations under this Memorandum. Under no circumstance will the County have any liability to the Court or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to County's performance under this Memorandum.

**4.2 Court Indemnification.** The Court shall indemnify and hold harmless the County for the Court's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, arising out of the willful misconduct or the negligent acts, errors or omissions of the Court, its officers or employees. Under no circumstance will the Court have any liability to the County or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to the Court's performance of its obligations under this Memorandum.

## 5. MISCELLANEOUS

**5.1 Entire Agreement.** This Memorandum, the exhibits to this Memorandum, contain the entire agreement between the parties regarding the subject matter herein. This Memorandum and its exhibits supersede any and all other previous agreements, oral or written, concerning the subject matter of this Memorandum.

**5.2 Amendment.** No addition to or alteration of the terms of this Memorandum is valid unless it is in a writing executed by both parties and approved by the governing bodies of both parties.

**5.3 Time of Performance.** Unless specifically stated to the contrary, all references to days in this Memorandum mean calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or holiday, such payment or performance is to occur on the next succeeding business day.

**5.4 Further Assurances.** Each party agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, any other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Memorandum.

**5.5 Assignment.** Except as otherwise provided in this Memorandum or in any of the exhibits hereto, neither party may assign its rights or obligations under this Memorandum without the prior written consent of the other party. Notwithstanding the foregoing, the County may subcontract its obligations under this Memorandum and will notify the Court of the identity of any subcontractors it uses to perform services provided for in this Memorandum.

**5.6 Notices.** Any notices required or permitted under this Memorandum are to be in writing and may be (i) personally delivered, (ii) mailed by depositing such notice in the United States mail, first class postage prepaid, or (iii) sent by nationally recognized overnight delivery service, addressed as follows, or to such other place as either party may designate by subsequent written notice to the other party:

If to Court: Superior Court Administration  
725 Court Street, 4<sup>th</sup> Floor  
Martinez, CA 94553  
Attn: Executive Officer

If to County: Joanne Buenger  
Deputy Chief Information Officer  
Contra Costa County  
30 Douglas Drive  
Martinez, CA 94553

with a copy to:

County Administrator's Office  
651 Pine Street, 10<sup>th</sup> Floor  
Martinez, CA 94553  
Attn: County Administrator

**5.7** Waiver. A waiver of enforcement of any terms or conditions of this Memorandum by either party is effective only if expressly agreed to in writing by a duly authorized officer of that party. A waiver by either party of a breach of any of the terms of this Memorandum shall not be construed as a waiver of any succeeding breach of the same or other term of this Memorandum.

**5.8** Binding. This Memorandum and its exhibits are binding upon the successors of the Court and the County.

**5.9** Counsel and Drafting. Each party, by its execution of this Memorandum, represents to the other party that it has reviewed each term of this Memorandum with its counsel, or has had the opportunity for such review with its counsel. Neither party may deny the validity of this Memorandum on the ground that it did not have the advice of counsel. Each party hereto has had the opportunity to participate in the drafting and preparation of this Memorandum. The provisions and terms of this Memorandum are to be interpreted in accordance with their plain meaning.

**5.10** Counterparts. This Memorandum may be executed in one or more counterparts, all of which together are one and the same agreement.

**5.11** Severability. If any provision of this Memorandum is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**5.12** Governing Law. This Memorandum is governed by the laws of the State of California.

**5.13** Certification of Authority to Execute this Memorandum. Each party certifies that the individuals signing below on its behalf has authority to execute this Memorandum and to legally bind the party to the terms and conditions of this Memorandum and its exhibits.

**5.14** Relationship of Parties. Nothing contained in this Memorandum is to be interpreted or understood by either of the parties, or by any third persons, as creating the relationship of employer and employee, or principal and agent, between the County and the Court or their agents, employees or contractors. Both parties will at all times be deemed an independent contractor and to be wholly responsible for the manner in which they or their agents, or both, perform the services required of them by the terms of this Memorandum. Each party is solely responsible for its own acts and those of its agents and employees.

**5.15 Compliance with Laws.** Notwithstanding any provision to the contrary contained in this Memorandum, no provision of this Memorandum is intended to require any party to violate any applicable statute, rule of law or regulation.

**5.16 Confidential Information.** During the term of this Memorandum and at all times thereafter, County will: (a) hold all Confidential Information (as defined below) in strict trust and confidence; (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Memorandum; and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's prior written consent to the disclosure on a case-by-case basis. County will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Telecommunication Services hereunder and who have been advised of the confidentiality requirements of this Memorandum. The provisions of this section shall survive the expiration or termination of this Memorandum. County will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as County protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care. The Court owns all right, title and interest in the Confidential Information. County will notify the Court promptly upon learning of (i) any unauthorized disclosure or use of Confidential Information and, subject to the requirements of the California Public Records Act (California Government Code section 6250, *et seq.* (the "PRA")), will cooperate fully with the Court to protect such Confidential Information, and (ii) a request by the public for records under the PRA.

Upon the Court's request and upon any termination or expiration of this Memorandum, County will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that County has fully complied with the foregoing obligations. County acknowledges that there can be no adequate remedy at law for any breach of County's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to apply to a court of competent jurisdiction for appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

As used herein, the term "Confidential Information" means: (i) any information related to the business or operations of the Court, including information relating to the Court's personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to County by the Court), which is designated confidential or proprietary, or that County otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that County demonstrates to the Court's satisfaction that: (a) County lawfully knew prior to the Court's first disclosure to County,

(b) a third party rightfully disclosed to County free of any confidentiality duties or obligations, or (c) is, or through no fault of County has become, generally available to the public.

**5.17** Physical Access to Court Facilities. County telecommunications staff will request access to Court Buildings via e-mail to Court personnel to establish a mutually agreed upon date and time for Telecommunications Services to be provided.

**IN WITNESS WHEREOF**, the parties hereto are executing this Memorandum as of the day and year first above written.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA:**

By: \_\_\_\_\_  
Hon. Jill Fannin, Presiding Judge

**COUNTY OF CONTRA COSTA:**

By: \_\_\_\_\_  
David Twa, County Administrator

## EXHIBIT A

### TELECOMMUNICATIONS SERVICES

The County Department of Information Technology shall provide the following services as requested by the Court, and will invoice the Court as described below. As used in this Exhibit A, the term “days” means days on which County offices are open for business. The dates listed are normal timelines that may vary depending on vendor delivery, available facilities at the termination site or carrier locations, coordination of service, complexity of service and discovery of service. The time frames listed should be used as a guideline only and not an assurance of service.

Support will be provided at the Service Locations identified in Exhibit B (Service Locations). County staff will request access to Court Buildings via e-mail to Court personnel to establish a mutually agreed upon date and time for Services to be provided. Travel time is included as part of the hours specified in this Memorandum (portal to portal time for travel will be billed to the department at the rate of the person(s) required to travel). If support includes meetings or other technical work to be performed at a location other than a Service Location, travel and expenses for the work will be billed to Court

#### A. Telecommunication Services.

1. Telecommunication services, voice Unified Communications as a Service (UCAAS), and data transmission services to the Court Buildings. Voice and data utility services are provided and procured through the County’s contract with AT&T.
2. Telephone and voice line installation, configuration, and repairs.
3. Order new analog line prior to May 1, 2017; thereafter Court will order new analog lines:
  - Requires 7-8 days lead time
  - Technician site visit 3 days after line delivered
4. Order new Direct Inward Dialing (DID) range for Primary Rate Interface (PRI) only:
  - Requires 7-8 days lead time
  - Technician site visit 3 days after line delivered (day count begins once County receives an approved telecom work order).
5. Cancel a line or a DID
  - Requires 4-5 days lead time
  - The line will be terminated within 30 days of the courts request and billing will discontinue at the next billing cycle.
6. Change or move of a line prior to May 1, 2017; thereafter Court will change or move lines:

- Requires 17-18 days lead time for Trunk side service to Trunk side service,
- Requires 9-10 days lead time for Line side service to Line side service
- Technician site visit 3 days after line change or move completed.

7. Change or move existing DID:

- Requires 17-18 days lead time for Trunk side service to Trunk side service
- Requires 9-10 days lead time for Line side service to Line side service
- Technician site visit 3 days after line change or move completed (day count begins once County receives an approved telecom work order).

**B. County Staffing.** The County will provide qualified staff and maintain staff proficiency through on-going training and certification programs for standard technologies.

**C. Support Services.** County will provide the following telecommunication support services for the Courts Collection Unit (CCU), Automatic Call Distributor (ACD), and Interactive Voice Response (IVR):

1. A help desk logging system that logs help desk tickets and is operational 12 hours a day, five days a week (“Normal Support Hours”). Outside of Normal Support Hours, an answering service is used to contact County on-call staff.
2. Support and maintenance for requested telephone services and equipment;
3. Problem troubleshooting and resolution; e.g., phone doesn’t ring; no dial tone;
4. Assist the Court in the purchase of telephone related equipment and services from third-party vendors;
5. Under normal conditions and during normal business hours 8:00 a.m. and 5:00 p.m. PST (“Normal Support Hours”), County will respond to a support request within two hours of receipt of a trouble call by a Telecommunication Services technician;
6. Outside of Normal Support Hours, County will respond to a support request within three hours of receipt of a trouble call by a Telecommunication Services technician.

**EXHIBIT B**  
**COURT BUILDINGS**

The County will provide Telecommunication Services at each of the following court locations:

1. Wakefield Taylor Courthouse, 725 Court Street, Martinez, California.
2. A.F. Bray Courthouse, 1020 Ward Street, Martinez, California.
3. Court Annex, 1010 Ward Street, Martinez, California.
4. Peter L. Spinetta Family Law Center, 751 Pine Street, Martinez, California.
5. Juvenile Hall, 202 Glacier Drive, Martinez, California.
6. Richard E. Arnason Justice Center, 1000 Center Drive, Pittsburg, California.
7. George D. Carroll Courthouse, 100 37<sup>th</sup> Street, Richmond, California.
8. Walnut Creek Courthouse, 640 Ygnacio Valley Rd., Walnut Creek, California.
9. 911 Alhambra Avenue, Martinez, California

**EXHIBIT C**

**TELECOMMUNICATION SERVICES RATES AND CHARGES**

**A. TELECOMMUNICATION SERVICES BILLING**

1. The County will charge the Court for the Telecommunication Services as set forth in this Exhibit C.
2. County will bill the Court monthly for Telecommunication Services. The two methods of billing for voice and data services set forth in this Exhibit C are: (a) the legacy infrastructure used by the County in billing the Court for telecommunication services prior to this Memorandum being entered into (“**Legacy Billing**”), and (b) a billing method based on the new Unified Communications as a Service (UCAAS) infrastructure.
3. The County will invoice the Court using only Legacy Billing until all of the Court voice and data lines are moved to UCAAS. Once all of the Court voice and data lines are on UCAAS, the County will notify the Court in writing and the County will begin billing the Court using the UCAAS billing model set forth below as of the first of the following month.
4. County will continue to bill the Court for active legacy infrastructure lines and related ports until all lines and ports on that infrastructure are no longer in use. Calls referred from an old phone number to a new phone number using AT&T’s call referral service will not be considered as an active line for a period of 60 days; after 60 days costs will be charged.
5. Total costs invoiced by the County will vary from month to month based on the number of lines and ports that are in use by the Court at the end of the prior month. County shall use its WinBill system to establish number of lines counts for voice and data lines, and for ports.

**B. LEGACY BILLING FIXED FEES.** The County will charge the Court the following fixed rates under Legacy Billing:

1. Voice and Data Lines. Voice and data lines will be charged at the rate of \$30.00 per line per month. Monthly charges will apply based on the line counts for that month. For reference, as of July 1, 2016, the following organizational numbers had the following line counts:

<u>Org Number</u>	<u>End of June Count</u>
7995 (AOC-Court).....	4
7996 (Trial Court Operations).....	278

7997 (Collections Compliance Unit).....	12
7999 (Non-Rule 810 Grants).....	<u>1</u>
Total lines.....	295

2. Switch Ports. Switch ports will be charged at the monthly rate of \$14.25 per switch port. Monthly charges will apply based on the port counts for that month. The estimated monthly charges based on the July 1, 2016 line and port counts are as follows:

<u>Item</u>	<u>Count</u>	<u>Fixed Rate</u>	<u>Total</u>
Voice/Data Line	295	\$30.00 per line	\$8,850.00
Ports	1,112	\$14.25 per port	<u>\$15,846.00</u>
Total			\$24,696.00

3. Phone Usage Rates. The County will bill the Court for telephone usage rates at AT&T's monthly charges, which are in addition to County fixed rates. The AT&T service types include but are not limited to:

- a. ISDN
- b. Data Port
- c. PRI
- d. Data Circuit
- e. Voice Circuit
- f. 1MB
- g. Pay Phone
- h. Centrex
- i. Opt-E-Man
- j. DID
- k. PRI Trunk
- l. White Page Listing

4. Voice Mail.
- a. Org 7996, 510 (489 June, 2016) mail boxes – \$6.40 per mail box
  - b. Org 7997, 10 (8 June, 2016) mail boxes - \$6.40 per mail box

**C. UNIFIED COMMUNICATIONS AS A SERVICE (UCAAS) BILLING**

1. Services Include. Rates per line will include monthly telephone service, voice mail, switch port charges, and phone usage within the Continental United States.

2. Services Exclude. Rates do not include A911 service (emergency location Identifier for 911 calls). If The Court implements this service, the cost per station will be \$3.00.

Type of equipment	Monthly Cost	Estimated Number	Total Estimated Monthly Recurring Cost
IP Phone Lines	\$40.00 *	422	\$16,880.00
Voice/Data Line	\$30.00**	2	\$60.00
ATT Virtual Private Network (AVPN)	\$5,118.00	1	\$5,118.00
Total Fixed Recurring Charges			\$22,058.00

The \$40.00 per month cost for each IP Phone station includes: AT&T fixed rate, AT&T IP Flex, AT&T station charge, voice mail, phone usage within Continental United States, and telecommunications maintenance. Telecommunications maintenance is technician time for support of basic phone operation, which includes but is not limited to service and support of administration portal and trouble ticket issues.

\*\$25.50 AT&T fixed rate, \$14.50 County overhead charge

\*\*\$15.50 AT&T fixed rate, \$14.50 County overhead charge

3. Outside Continental U.S. AT&T usage rates for outside the Continental United States will be bill based on the carrier's charges.

**D. Support Services.** The County will charge the Court for its time and cost of materials according to the below table when the Court requests service or new equipment is procured. For each request for services or equipment made by the Court, the Court will open a new work order. The County will track costs for each work order request separately, including requests for additional phones, phone moves and changes in phone function.

<u>Type of Service</u>	<u>Unit Cost</u>
Telecom Labor	\$108.00 per hour
Equipment Procurement	At cost

**E. Indirect and Overhead Costs.** The County's indirect and overhead costs included in the rates payable under this Memorandum are set forth in Sections B and C of this Exhibit C. The County calculates its indirect and overhead costs included in the rates set forth in this Memorandum by dividing its total cost of delivering telecommunications services to internal County department and customers external to the County by the number of voice and data lines it provides.