

BILL NO. 1239

ORDINANCE NO. 1151

Sponsor: Councilman Grady

AN ORDINANCE TO APPROVE AND AUTHORIZE EXECUTION BY CITY OFFICIALS OF THE CITY OF BLACK JACK, MISSOURI THE AGREEMENT WITH VOICEPRO, INC. FOR EQUIPMENT AND SERVICES INVOLVING THE CITY HALL TELEPHONE SYSTEM

WHEREAS, the City needs to upgrade and modernize the telephone system in City Hall; and

WHEREAS, the City has selected VoicePro, Inc. as the Company to carry out the necessary work on the telephone system.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:

SECTION 1: The Mayor and the City Clerk are hereby authorized to execute on behalf of the City the Agreement submitted by VoicePro, Inc. ("Agreement") in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: The Mayor is authorized to agree to minor changes to the Agreement so long as the changes do not substantially alter the purposes or costs of the Agreement.

SECTION 3: This Ordinance shall become effective upon its passage and approval as provided by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK, ST. LOUIS COUNTY, MISSOURI, THIS 17th DAY OF DECEMBER, 2019.

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Norman C. McCourt, Mayor

ATTEST:

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Karen E. Robinson, MRCC-S/CMC  
City Clerk  
Executive Assistant to the Mayor

APPROVED THIS 17th DAY OF DECEMBER, 2019.

APPROVED AS TO LEGAL FORM:

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Sheldon K. Stock, Special Counsel



4390 Green Ash Drive  
Earth City, MO 63045  
(314) 426-8900

**AGREEMENT**

**Proposal submitted to:**

City of Black Jack

Name

12500 Old Jamestown Road

Street

Black Jack

City

State MO Zip 63033

**Terms of payment:**

Purchase Option:

Monthly Equipment Lease Price: \$472.52 + tax

One Time Lease documentation fee: \$199.00

Deposit: \$1,145.04 (First & Last Month's  
Payment, plus Lease Origination Fee)

**Work to be performed at:**

Same as above

Street

City

Contact Name

Telephone

This Proposal consists of Pages 1, 2, 3 (Terms and Conditions) and 4-6 (Statement of Work). Once you as the Buyer sign below signifying your acceptance of the Proposal, and we in Turn sign below your signature, this Proposal becomes the final Agreement between VoicePro Inc. as Seller, and You, as Buyer.

Respectfully Submitted: VoicePro, Inc. (Seller)

Buyer's Acceptance:

Accepted (Firm Name)

Signature Title

Date:

Seller's Acceptance: VoicePro, Inc.

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

Title: \_\_\_\_\_

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

**Product:**

**VoicePro, Inc. as Seller agrees to sell, and the above-identified Buyer agrees to buy, for the price and terms set out hereafter, the following Equipment ("Product") and Services listed on the following pages.**

## TERMS AND CONDITIONS

### 1. Agreement

This order is placed on the express condition that all provisions appearing in this Agreement shall constitute the sole and exclusive agreement between Seller and Buyer.

### 2. Creation of a Security Interest

Until such time as Buyer has paid the agreed purchase price, Seller hereby retains and Buyer hereby grants a purchase money security interest in the Product, and Buyer shall execute all instruments (including financing statements) deemed necessary by Seller under applicable law to establish, maintain and continue perfected Seller's purchase money security interest in the Product.

### 3. Warranties, Limitation and Exclusion

The warranty for the Product is limited to that provided by the manufacturer on the Description of the Product and the Services page. In the event Product warranty service is required, Seller's obligations are expressly limited to working with manufacturer to affect the manufacturer's warranty.

SELLER HEREBY DISCLAIMS AND BUYER HEREBY WAIVES ALL OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SERVICES AND/OR PRODUCT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE BY BUYER. RESPONSIBILITY FOR DAMAGE RESULTING FROM ACCIDENT, TRANSPORTATION, NEGLIGENCE, MISUSE, MODIFICATION WITHOUT PRIOR CONSENT, UNAUTHORIZED ATTEMPTS TO REPAIR, ELECTRICAL POWER SURGES, LIGHTNING, ACTS OF GOD, FAILURE OF ELECTRICAL POWER, OR ENVIRONMENTAL CONCERNS.

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT OR OTHER DOCUMENT TO THE CONTRARY: (i) IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, WHETHER IN TORT OR CONTRACT, INCLUDING LOST PROFITS OR LOST DATA, EVEN IF IT HAS KNOWLEDGE OF THE RISK OF SUCH DAMAGES; (ii) IN NO EVENT SHALL SELLER BE LIABLE CONCERNING PERFORMANCE OR NONPERFORMANCE BY SELLER, SATISFACTION OF ANY OBLIGATION OR IN ANY WAY RELATED TO THIS AGREEMENT IN EXCESS OF THE SUMS PAID TO SELLER BY BUYER; OR (iii) IN NO EVENT SHALL SELLER BE MADE SUBJECT TO A LEGAL PROCEEDING BY BUYER MORE THAN ONE YEAR AFTER ANY CAUSE OF ACTION AROSE.

### 4. Benefit

This Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by each of the parties hereto, their successors and assigns; however, Buyer may not delegate its performance obligations to any party.

### 5. Construction

This writing constitutes the final expression of the agreement between the parties; neither any course of prior dealings between the parties nor trade usage shall be relevant to supplement or explain any term used herein. This Agreement has been finally accepted in the State of Missouri, shall be governed by the laws of the State of Missouri, despite its laws on conflicts, and Buyer consents to the jurisdiction and venue of the courts sitting in St. Louis County, Missouri or the Eastern District of Missouri, as the case may be, and waives the defense of inconvenient forum.

## **6. Attorney Fees**

In the event Seller must file suit to enforce its rights hereunder, Buyer shall pay to the Seller reasonable attorney's fees and Court costs which may be incurred by Seller to enforce, or attempting to enforce, any of its rights under this Agreement.

## **7. Fair Competition**

Buyer agrees that during the term of any agreement with Seller and for a period of two (2) years thereafter that it will not hire or attempt to hire any employee of Seller or assist in such hiring or attempt to hire by a third party.

## **8. Warranties**

- A. VOICEPRO, INC. IS NEITHER A HARDWARE MANUFACTURER NOR A SOFTWARE DEVELOPER (EXCEPT AS TO ANY CUSTOM SOFTWARE), BUT A RESELLER, INTEGRATOR AND TECHNOLOGY MANAGEMENT SERVICE PROVIDER. ACCORDINGLY, VOICEPRO, INC. DOES NOT PROVIDE ITS OWN WARRANTIES FOR HARDWARE OR THIRD PARTY SOFTWARE, BUT MERELY ASSIGNS TO ITS CUSTOMERS THE WARRANTIES, IF ANY, PROVIDED BY THE MANUFACTURER OR SUPPLIER OF THE HARDWARE OR THIRD PARTY SOFTWARE. VOICEPRO, INC. SELLS OR SUB-LICENSES, TO THE EXTENT SUCH WARRANTIES ARE TRANSFERRABLE, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VOICEPRO, INC. DOES NOT OFFER, AND SPECIFICALLY DISCLAIMS, ANY WARRANTY OF ITS OWN, EXPRESS OR IMPLIED.
- B. Services Warranty - VoicePro, Inc. warrants that the Services will be performed in a manner consistent with customary practice in the industry. Should a failure to comply with this warranty appear within thirty (30) days after the date of completion of such Services, VoicePro, Inc. shall, if promptly notified in writing, at its option, either provide the Services anew or refund to the Customer the price charged for such non-conforming Services. Such re-performance or refund shall be Customer's exclusive remedy and shall constitute fulfillment of all liabilities of VoicePro, Inc. with respect to any nonconformity of or defect or deficiency in Services furnished to Customer.
- C. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED; ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR THAT SOFTWARE OR EQUIPMENT IS FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE ARE HEREBY DISCLAIMED.

## **9. Limitation of remedies and liability**

Exclusive Remedies VoicePro, Inc liability on any claim, whether in contract, negligence, tort, strict liability or otherwise, arising in whole or in part out of Services performed under this Agreement, shall in no case exceed the fees paid to VoicePro, Inc for the proceeding twelve calendar months which give rise to the claim. All causes of action against VoicePro, Inc arising out of or relating to this Agreement or the performance or breach of this Agreement shall expire unless brought within one (1) year after the first date of performance or breach which in whole or in part gives rise to the claim. These remedies are exclusive and in lieu of all other remedies available at law or in equity for any act performed in connection with this Agreement, or for any

breach of this Agreement, whether brought under a theory of tort liability, contract liability, or any other theory.

**Statement of Work  
City of Black Jack**

**1. Upgrade Hardware Configuration**

<b><u>2. System</u></b>	<b><u>Working</u></b>	<b><u>Equipped</u></b>
SIP Trunk Licenses	08	08
Digital Station Ports	18	24
VOIP Station Ports	01	01

**3. Hardware Configuration**

- 01 **Use Existing** - 6 Blade 2U NEC Digital Communications Chassis'  
\*currently configured to utilize 4 of 6 available blade slots
- 01 **NEW NEC SV9100** CPU Main Processor Blade//8 SIP Trunk Licenses/1 VOIP Terminal License\*  
\*Network Connection Required
- 01 **Use Existing** 16 Port Digital Blade
- 01 **Use Existing** 8 Port Digital Blade

**4. Voice Mail Equipment**

- 01 **NEW NEC InMail Voicemail System** – 29 total mailboxes//Includes 19 licenses of unified messaging (Voicemail to Email)

**5. NEC Digital Terminals (Use Existing)\*\***

- 17 Digital 12 Button UX5000 Telephones, 12 programmable keys, Display with Full Duplex Speakerphone
- 01 Digital 24 Button UX5000 Telephones, 24 programmable keys, Display with Full Duplex Speakerphone  
\*\*Telephone User Interface will change//new key sheets required

**6. NEC VOIP Terminals (Use Existing)\*\***

- 01 VOIP 24 Button SV9100 Telephones, 24 programmable keys, Display with Full Duplex Speakerphone

**7. Netgear Switch**

- 01 Netgear 5 Port Gigabit POE Switch with One Year Warranty

**8. Lot of Labor:**

Labor includes all Programming, Installation and End User training

**9. NEC Pricing Information**

**New 60 Month Lease Program** **\$472.52/Month + Tax**

**5 Year NEC Hardware Warranty (on new NEC components)  
5 Year Customer Support Agreement  
Includes NEC Promotion Pricing valid until December 31, 2019**

**Lease Option: 60 Months/2 payments in advance/\$1.00 buyout/One time documentation fee of \$199.00**

\*\*Except where noted, installation is based on re-using all existing telephone and/or data wire and other existing equipment when applicable. In the event any repairs and/or replacement of cable, or toning and testing is required, VoicePro, Inc. will perform such work at the current time and material rates upon customer approval.

**10. Deductibles**

Deductibles for replacing existing equipment are as follows: \$150.00 for replacement digital phone; \$350.00 for replacement blade. These prices are only for replacing existing phones that fail. New phones do not qualify for deductible pricing.

**11. Location**

VoicePro will upgrade the current system at 12500 Old Jamestown Road, Black Jack, Missouri, connecting to One (1) remote location.

**12. NEC UX5000 Chassis**

One (1) UX5000 Chassis is configured to use Three (3) of the six (6) available blade slots.

**13. Dial Tone**

The NEC SV9100E is licensed for Eight (8) SIP Trunks.

**14. Voicemail System**

VoicePro will install a NEC InMail voicemail system that will provide Twenty-Nine (29) mailboxes. Included are Nineteen (19) licenses of unified messaging (voicemail to email). Each user will have three (3) different Voicemail greetings.

**15. NEC SV Station Equipment**

Per our system configuration, VoicePro will use the existing digital telephones (City Hall Location) and one (1) new VOIP telephone (Remote Location) with a 5 port GB POE Switch. VoIP Phone location connected via public internet. VOIP Phones using the public Internet are subject to loss, latency & jitter. VoicePro cannot troubleshoot and/or fix call quality issues related to poor internet. Customer is responsible for establishing the network connection between City Hall & remote location.

**16. Analog Station Equipment:**

VoicePro will not run customer's fax machines and conference phones through the phone system. Any alarms, credit card or elevator lines remain outside of phone system.

**17. Headsets**

Use existing. VoicePro will attempt to re-use any customer provided headsets but cannot 100% guarantee functionality.

**18. Cordless Phones**

Not included.

**19. Call Flow**

To be reviewed at the implementation meeting.

**20. Remote Access**

VoicePro **requires** a LAN connection with IP addresses for system administration and remote access support. If there are not any available network ports on the customer provided switch, remote access will not be available.

**21. Lot of Labor:**

Full Implementation including On-Site Training of all Employees and System Administration instructions is included in our proposal.

**22. Customer Responsibilities:**

The customer will be required to provide VoicePro, Inc. with the following prior to and during installation:

- All users must be notified by their employer of the upcoming SV installation
- VoicePro is not responsible for any customer provided network equipment, including routers, switches. If support is required on the SV & it is a result of an issue related to customer provided equipment, VoicePro labor is not covered under the support agreement and the customer will be billed at our current labor rate.
- Once the phone system is up and working, program changes will be permitted per the S.O.W. Any changes beyond the S.O.W. will be billed as additional work and not covered under this agreement.
- After the system is installed, each user is required to login to the system, record user name, greetings, change password and completely set up voice mail. VoicePro, Inc. recommends all attendees, after each training session, log in to the voice mail system. The customer is required to provide VoicePro remote access to the NEC.
- With a letter of agency, VoicePro will coordinate installation with the service provider.
- Customer is required to give VoicePro, Inc. access to customer’s server (i.e. passwords, etc.) for database programming.
- All required cabling for the SV system needs to be in place. VoicePro will test at both ends, i.e. jack and patch panel.
- VoicePro, Inc. personnel will be provided access to all areas where work is to be performed.
- Customer will appoint a representative to act as a single point of contact to expedite any issues that may impede VoicePro, Inc. workforce from completing customer’s project in a timely and professional manner.

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Joel Gebauer  
VoicePro Networks

\_\_\_\_\_  
Name  
City of Black Jack

\_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_