



Resolution No. 2002-044

A RESOLUTION APPROVING PURCHASE OF PHONE SYSTEM FOR POLICE, CITY HALL AND PUBLIC WORKS FACILITIES

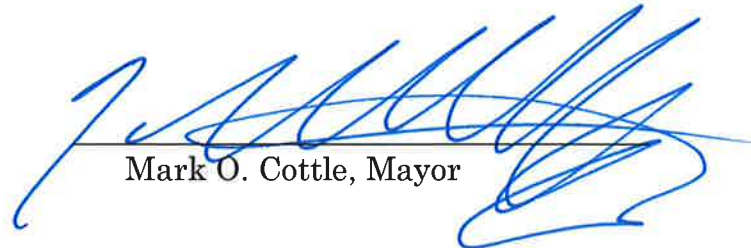
WHEREAS, a new Police Facility is presently under construction on Borchers Drive in Sherwood; and

WHEREAS, there is an allocation for the purchase of a new phone system which will also serve the City Hall and Public Works facilities,

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

The Council authorizes the City Manager to purchase a new phone system from Eschelon Telecom for the amount of \$121,443.63 Contract is shown here as Exhibit A to this resolution.

Duly passed by the City Council this 29th day of August 2002.


Mark O. Cottle, Mayor

ATTEST:


C.L. Wiley, City Recorder

CITY OF SHERWOOD, OREGON
PURCHASE AGREEMENT FOR

TELECOMMUNICATION SYSTEM AND PERIPHERALS

THIS AGREEMENT made and entered into this 29 of August, 2002 by and between the City of Sherwood, a municipal corporation of the State of Oregon, hereinafter called City, and Eschelon Telecom, hereinafter called Seller.

RECITALS

- a. Seller has submitted a bid or proposal to City for the sale of certain goods.
- b. Seller is in the business of selling certain goods and is aware of the purposes for which City will use the goods.
- c. City and Seller wish to enter into a contract under which City shall purchase the goods described in Seller's bid via the existing contract between the City of Tigard and Seller.

AGREEMENT: The parties agree:

1. **GOODS TO BE PROVIDED:**

City shall purchase two (2) NEC NEAX 2000 IPS telephone systems and AD-40 voice mail systems from Seller in accordance with:

- a. The specifications (including any addenda) attached hereto as Exhibit A and incorporated herein by this reference;
- b. The Seller's Standard Terms and Conditions, attached hereto as Exhibit B and incorporated by this reference.
- c. The Scope of Work Statement, attached hereto as Exhibit C and incorporated by this reference.
- d. The NEC InProtect Extended System Protection Plan Customer Contract attached hereto as Exhibit D and incorporated by this reference. The InProtect contract is to be signed separately with the original signed copy sent to NEC America.
- e. Exhibit E is copies of NEC America Software License Attachment (labeled Schedule A) and Customer Software License Agreement (labeled Exhibit C). Both are contractual agreements between the City of Sherwood and NEC America for the express terms of software licensing. Neither document in Exhibit E has any bearing on the purchase agreement between the City of Sherwood and Eschelon Telecom. Exhibit E is included for reference only.

2. EFFECTIVE DATE AND DURATION:

This Agreement shall become effective upon the date of execution by the City's Local Contract Review Board and shall expire, unless otherwise terminated or extended, on Aug 31, 2003, whichever comes first. All goods under this Agreement shall be delivered and completed prior to the expiration of this Agreement.

3. COMPENSATION:

- a. **City hereby agrees to pay Seller \$121,443.63 for the goods, including shipping and handling. The total purchase price shall be considered payment for all Sellers' obligations described in this agreement and includes the 5 year InProtect warranty from NEC. Seller shall be responsible for the payment of all taxes associated with the sale of the goods. City is exempt from the payment of Federal Excise Tax.**
- b. Seller shall promptly advise City of all reasonably available technological advances that are known or become known to Seller while this agreement is in effect which may result in the goods having added value, capacity, or usefulness when used for City's purpose. If Seller intends to provide goods incorporating technological advances and still meeting the specifications and the City's needs at no additional charge, Seller shall provide City with 30 days' notice of the proposed change. The City may require that only goods not incorporating the changes be supplied by providing written notice to seller within 5 days of receiving the notice of the proposed change. Any other changes incorporating technological advances shall only be approved as an amendment to this agreement.
- c. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. DELIVERY:

Seller shall deliver the goods no later than 30 days after receipt of City's purchase order, together with an executed copy of this Agreement. Seller agrees to provide goods as specified in Exhibit A.

No language contained in a purchase order, work order, or delivery order shall vary, amend, modify, or add terms or conditions to this Agreement under which the order is placed.

5. INSTALLATION:

Unless the Specifications (Exhibit A) require installation by Seller, the City shall install the goods purchased under this agreement. If Seller is to install the goods, installation shall be completed for the Police Station by November 1 and for City Hall no later than 90 days after the police station. Any installation by Seller shall be in accordance with the provision of this agreement, including all Exhibits, including Exhibit C (Scope of Work). Aspects of the voice messaging system, namely the ActiveFax and Unified Messaging modules will not be activated during the initial installation. A timeframe for the installation of these options will be determined at a later date.

6. TESTING AND ACCEPTANCE:

Seller shall test the goods prior to delivery. Seller's tests shall determine whether the goods meet Seller's specifications and are fit for the purpose intended. Acceptance or rejection of the goods purchased shall occur 10 days after delivery and inspection by Buyer. Failure to inspect and accept or

reject goods shall neither relieve Seller from responsibility for such goods, which do not meet the requirements in this Agreement nor impose liability on Buyer.

7. **RISK OF LOSS:**

Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Seller. Risk of loss shall not pass to Buyer until the goods are delivered to and checked in at the location specified by Buyer.

8. **ASSIGNMENT/DELEGATION:**

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other and any attempted assignment or transfer without the written consent of the other party shall be invalid.

9. **SUBMITTING BILLS AND MAKING PAYMENTS.**

All notices and bills shall be made in writing and may be given by personal delivery, mail or fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF SHERWOOD

Brad Crawford, Systems Administrator
20 NW Washington St
Sherwood, Oregon 97140

Business Phone: 503-625-4203
Business Fax: 503-625-5524
Email Address: crawfordb@sherwood.or.us

SELLER

Eschelon Telecom, Inc
14050 SW Milton Ct
Portland, OR 97224

Business Phone: (503) 968-1700
Business Fax: (503) 968-8740
Email Address: prsoles@eschelon.com

10. **TERMINATION**

City has the right, in its sole discretion, to terminate without cause or for no cause, to termination this Agreement at any time by giving notice to Seller. If City terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.

11. **ACCESS TO RECORDS:**

City shall have access to such books, documents, papers and records of Seller as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

12. **FORCE MAJEURE:**

Neither City nor Seller shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, natural disaster, war, civil

unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subseller or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

13. NON-DISCRIMINATION:

Seller agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Seller also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

14. WARRANTY AGAINST DEFECTS:

Seller warrants that the goods shall remain free of defects in material and workmanship for a period of one (1) year commencing the date of City's acceptance. Such defects shall include any failure of the goods to meet Seller's specifications or the description contained in Seller's product literature. If within the warranty period City discovers such a defect, Seller shall repair or replace the defective item or component free of charge. If after three attempts Seller is unable to eliminate a defect, or if Seller does not commence the warranty work within the time allowed in this paragraph, City shall have the right to return the defective item or component and, at City's option, either obtain a full refund of the purchase price of the goods or obtain a refund, in an amount to be agreed upon by the parties, of the portion of the purchase price of the goods that is allocable to the defective item or component. Seller shall commence all warranty work within 48 hours of receiving notice of the warranty claim. All warranty work shall be performed at City's facilities unless otherwise agreed by the parties. If warranty work is performed at Seller's facilities, Seller shall pay all shipping costs, including the cost of return shipment. This warranty shall apply to all repair parts furnished by Seller and all repairs performed by Seller.

15. INTELLECTUAL PROPERTY WARRANTY:

Seller warrants that none of the goods, the use thereof or any of the applications, processes or designs employed in the manufacture thereof infringes the valid claims of any letter patent, patent application, copyright, trade secret or any other property right of any third party. If as a result of any suit or proceeding alleging an infringement of any of the foregoing property rights City's use of the equipment is enjoined, Seller shall at no cost to City either obtain for City a license to use the goods or modify the goods so as to avoid the infringement without any degradation in performance. If Seller cannot obtain such a license and cannot so modify the equipment, Seller shall promptly refund to City the purchase price, less a reasonable amount for depreciation.

16. MAINTENANCE SERVICES:

Unless otherwise provided in the Specifications (Exhibit A), the City shall have the right to maintain the goods purchased under this Agreement. Repairs or replacement of parts by the City or its agents or maintenance contractors shall not alter or void any warranties for equipment or goods purchased under this contract.

If provided for in the Specifications (Exhibit A), Seller shall provide maintenance services for a 5 year period commencing on the date of delivery under the guidelines established in the Specifications (Exhibit A). All maintenance services shall be performed on City's premises, unless otherwise agreed by the parties. Seller shall provide substitute equipment of equal quality and function for City's use if the maintenance services will exceed 2 days in duration. City may terminate Seller's maintenance services at any time without cause upon the delivery of written notice. In the event of such termination, Seller's other obligations under this Agreement shall remain unchanged and Seller shall promptly refund to City all amounts prepaid for maintenance services and unused.

17. ASSIGNMENT OF MANUFACTURER'S WARRANTIES:

Seller hereby assigns all warranties of the manufacturers of components of the goods to City to the extent such warranties are assignable. In the event Seller must obtain the consent of the manufacturer or take other action before any such warranties are assignable, Seller shall do so prior to delivery.

18. INDEMNITY/HOLD HARMLESS:

Seller shall defend, indemnify and hold harmless City, City's officers, employees, agents and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Seller or its subsellers, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

19. INSURANCE:

Commercial General Liability Insurance: If Seller will be installing or testing the goods, or otherwise performing services on City's premises, Seller shall provide a certificate indicating that Seller has commercial general liability insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days prior to cancellation. If Seller hires a subseller to perform services on City's premises, Seller shall ensure that Seller's subseller complies with this paragraph.

Business Automobile Liability Insurance: If Seller will be delivering the goods, Seller shall provide City a certificate indicating that Seller has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Seller hires a carrier to make delivery, Seller shall ensure that said carrier complies with this paragraph.

Workers' Compensation Insurance: The Seller, its subsellers, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must

provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Sellers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

Certificates of Insurance: As evidence of the insurance coverage required by the contract, the Seller shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract.

20. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including witness fees (expert and non-expert), attorney's fees and court costs on appeal.

21. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Seller shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subsellers and income tax withholding contained in ORS Chapter 279, the provisions of which are hereby made a part of this agreement.

22. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the terms of proposal conflicting herewith.

23. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

24 INTERGOVERNMENTAL COOPERATIVE PURCHASING

The Seller submitting this contract agrees to extend identical prices and services under the same terms and conditions to all regional public agencies. Quantities stated in this solicitation reflect the City's usage only.

Each participating agency shall execute its own contract with the Seller for its requirements.

25. COMPLETE AGREEMENT:

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibit, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and any other exhibit, Exhibit A shall control. In the event of an inconsistency between Exhibit C and Exhibit B, Exhibit B shall control. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Seller, by the signature of its authorized representative, hereby acknowledges that Seller has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Seller has executed this Agreement on the date hereinabove first written.

CITY OF SHERWOOD

Approved by Sherwood's Local Contract Review Board on: _____

By: Authorized City staff person letting contract

Date

SELLER

By: Company Name

Print Name & Title of Authorized Representative

Sign Name

Date

EXHIBIT 'A'

GOODS TO BE PROVIDED

NEAX2000 IPS PBX

Doc 8/23/02

Police Station

DESCRIPTION	EQUIPPED	WIRED	*CAPACITY
Central Office Lines	8	8	256
Digital Dterm Series E Ports	40	40	512
IP Seat Licenses	8	8	442
Analog Single Line Ports (modems & fax)	3	4	512
Voice Mail Ports	4	4	48
T1 Ports (1 ISDN PRI circuits)	24	24	168

*Capacity's are based upon sum combination of devices not to exceed total capacity.

COMMON EQUIPMENT

- 2 NEC NEAX 2000 IPS Central Control Unit (64 Ports Each)
- 1 CPU Unit with 3000 (or latest) Series Software (256 port license)
- 2 Rack Mount Brackets
- 5 Digital Station Interface Cards (8 stations each)
- 1 ISDN PRI Interface Boards (23B + 1D each)
- 1 Central Office Interface Card (8 lines each)
- 1 Analog Station Interface Card (4 ports each)
- 1 Remote Modem Maintenance Access
- 1 Music-on-Hold Interface
- 16 Conference Circuits (3 or 4 party)
- 8 IP Seat Licenses (for IP Phones and CCIS networking)
- 1 Least Cost Routing Program
- 1 MatWorX Windows Administration Software – LAN Based Interface
- 1 30 minmutes of System Battery Backup
- 1 NEC NEAX AD-40 Voice Mail 4 ports & 320 hours Storage with 1 hour UPS
- 1 Cisco Catalyst 2950 Switch with 1 GBIC Fiber Card for Single Mode Fiber
- 1 System Documentation (CD), Dterm Series E user training CD, DESI phone labeling software

DIGITAL STATION EQUIPMENT

- 30 DTP-8D-1 (Black) Display Station Sets -8 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.
- 1 DTP-16D-1 (Black) Display Station Sets -16 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.
- 1 DCU-60-1 (Black) 60 Programmable DSS/BLF keys

City Hall

DESCRIPTION	EQUIPPED	WIRED	*CAPACITY
Central Office Lines	5	8	256
Digital Dterm Series E Ports	35	48	512
IP Seat Licenses	8	8	448
Analog Single Line Ports (modems & fax)	5	8	512
Voice Mail Ports	4	4	48
T1 Ports	0	0	168

*Capacity's are based upon sum combination of devices not to exceed total capacity.

COMMON EQUIPMENT

- 2. NEC NEAX 2000 IPS Central Control Unit (64 Ports Each)
- 1 CPU Unit with 3000 (or latest) Series Software (128 port license)
- 2 Rack Mount Brackets
- 5 Digital Station Interface Cards (8 stations each)
- 1 Central Office Interface Card (8 lines each)
- 1 Analog Interface Card (8 ports each)
- 1 Remote Modem Maintenance Access
- 1 Music-on-Hold Interface
- 16 Conference Circuits (3 or 4 party)
- 8 IP Seat Licenses (for IP Phones and CCIS networking)
- 1 Least Cost Routing Program
- 1 MatWorX Windows Administration Software – LAN Based Interface
- 1 30 minmutes of System Battery Backup
- 1 NEC NEAX AD-40 Voice Mail 4 ports & 320 hours Storage with 1 hour UPS
- 1 Cisco Catalyst 2950 Switch with 1 GBIC Fiber Card for Single Mode Fiber
- 1 System Documentation (CD), Dterm Series E user training CD, DESI phone labeling software

DIGITAL STATION EQUIPMENT

- 35 DTP-8D-1 (Black) Display Station Sets -8 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.
- 1 DTP-16D-1 (Black) Display Station Sets -16 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.
- 1 DCU-60-1 (Black) 60 Programmable DSS/BLF keys

Public Works (supported via a Remote PIM off of the Police Station Switch)

DESCRIPTION	EQUIPPED	WIRED	*CAPACITY
Central Office Lines	4	4	256
Digital Dterm Series E Ports	10	12	512
IP Seat Licenses	0	0	448
Analog Single Line Ports (modems & fax)	3	4	512
Voice Mail Ports	0	0	40
T1 Ports (for remote PIM link)	24	24	168

*Capacity's are based upon sum combination of devices not to exceed total capacity.

COMMON EQUIPMENT

- 1 NEC NEAX 2000 IPS Central Control Unit (64 Ports Each)
- 1 Digital Remote PIM Interface Card
- 1 Rack Mount Brackets
- 2 Digital Station Interface Cards (one 8 station and 4 station)
- 1 Central Office Interface Card (4 lines each)
- 1 Analog Interface Card (4 ports each)
- 1 30 minmutes of System Battery Backup
- 1 System Documentation (CD), Dterm Series E user training CD, DESI phone labeling software

DIGITAL STATION EQUIPMENT

- 10 DTP-8D-1 (Black) Display Station Sets -8 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.
- 1 DTP-32D-1 (Black) Display Station Sets -32 programmable Line/Feature keys, 8 Function Keys, Speakerphone, built-in Headset Jack, Wall mountable, Four Menu-Driven Soft Keys with interactive 3-line by 24-Character Display, 2 Color LED,s and Volume-Ringer-Handset Control.

Warranty

12 Month On-site parts and labor Warranty with Eschelon Telecom, Inc.
See below for extended warranty options.

Installation

Complete Telephone and Voice Mail Installation using existing cable and hardware. Note: Unified Messaging Integration and Active Fax installation of up to five clients and train the on site staff to install the remainder of the clients.

Training

End user telephone and VM training in small groups prior to installation and during 1st day of service. Administration training included. Note: Unified Messaging Integration and Active Fax Training will be done on a train the trainer program.

	<u>Hardware</u>	<u>Labor</u>	<u>Total</u>
Police Station:	\$50,286.57	\$6,770.00	\$57,056.57
City Hall:	\$39,676.81	\$4,850.00	\$44,526.81
Public Works:	\$8,760.25	\$1,250.00	\$10,010.25
Total NET Price:	\$98,223.63	\$12,870.00	\$111,593.63

Warranty & Maintenance Options

Extended Warranty Option 1 \$9,850
5 year parts InProtect warranty from NEC
Includes the labor for all warranty work during the warranty period
Purchased at time of original contract

Extended Warranty Option 2 \$8,995
2nd year maintenance program
Includes the labor for all warranty work during the warranty period
purchased after the first year

Optional Equipment

Pre-Cut

Expanded Conference Bridges Options

32 party Conference Card	\$1,575
6/10 party Conference Card	\$350

NEC Phones

Multi-line Cordless Phone	\$840
16 Button Digital Display Phone with Cordless Handset	\$580
32 Button Digital Display Phone (DTP-32D-1)	\$354
16 Button Digital Display Phone (DTP-16D-1)	\$250
8 Button Digital Display Phone (DTP-8D-1)	\$228
8 Button Digital Phone (DTP-8-1)	\$154
8 Port Digital Station Card	\$480
IP Adapter (with Power supply)	\$310
NEC Power Patch Panel	\$1,772
8 Seat IP License	\$300
16 Seat IP License	\$600
32 Seat IP License	\$1,200

AIMWorx

AIMWorx Basic Package (includes PC, AIMWorX Manager, Alarm Manager, Call Accounting)	\$3,000
Interactive Directory	\$2,800
Single Point of Entry	\$2,800
PBX Traffic Analysis	\$3,200

Cisco Upgrade Options

Upgrade to 24 port switch	\$250
Upgrade to model 3550 Switch	\$800

EXHIBIT B

ESCHELON TELECOM, INC.

EQUIPMENT ORDER AGREEMENT

Eschelon Telecom, Inc., agrees to sell to and the Customer named below (the "Customer") agrees to purchase the equipment described below (the "Equipment") subject to the terms and conditions set forth in this agreement.

DESCRIPTION

(2) NEC NEAX 2000 IPS Phone Systems with associated Terminal
Equipment

(2) NEC AD40 Voice Messaging
Platforms

5-Year NEC INProtect Extended
Warranty

The purchase price of the Equipment shall be subject to adjustment in the event of any mutually agreed changes made to the above list including the addition or deletion of items of Equipment and any specifications, attachments or features.

PURCHASE PRICE. The purchase price for the Equipment is \$ 121,443.63 plus \$ 0.00 (0 %) sales tax for a total of \$ 121,443.63

CASH PURCHASE TERMS: The purchase Price is payable.

30% (\$) 36,433.09 upon the execution of this Agreement by the Customer

60% (\$) 72,866.18 upon the earlier of delivery of the equipment or commencement of installation

Balance Due (\$) 12,144.36 within 30 days after the initial Cut-over Date.

- LEASE/FINANCE: Please see section 8 on reverse. *Eschelon* will endeavor to make leasing or financing arrangements with an outside leasing or financing company. A deposit of 30% of the purchase price is payable upon execution of this Agreement by the Customer. The Advance Lease Payments will be remitted to Leasing Company upon credit approval. The balance of the 30% deposit will be returned to Customer when *Eschelon* is paid in full by the Leasing Company.

ADDITIONAL TERMS AND CONDITIONS INCLUDED ON THE REVERSE ARE AN INTEGRAL PART OF THE AGREEMENT.

Name: _____ *Eschelon* _____ Pat Soles
Address: _____ 14050 SW Milton Court
_____ Portland, OR 97224

By _____

By _____

Title _____

Title _____

Date _____

Date _____

1) **INSTALLATION.** Eschelon will install the equipment at the Customer's premises. The Customer will obtain the consent to install the Equipment of its landlord or building owner and any other necessary approvals and permits and will pay the charge thereof. Eschelon will coordinate with the telephone company. The cut-over Date, as the term is used herein, shall be the date upon which the Equipment is installed and available to provide the main source of the Customer's telephone service. The Customer will pay extra for any required telephone cable or conduit.

(2) **WARRANTY.** Subject to the provisions of this paragraph, Eschelon warrants that, for a period of (one) year from the Cut-over Date, the Equipment and its installation will be free from defects in material and workmanship. If defects appear within the above one-year period, Eschelon will have the option of repairing or replacing the Equipment or its installation at its expense. Such repair or replacement shall be Customer's exclusive remedy for breach of warranty. This warranty does not extend to any Equipment which has been (a) subject to misuse, neglect, accident, fire or other casualty, (b) wired, installed, repaired or altered by anyone other than Eschelon or (c) moved from its original location or no longer owned and used by the Customer named herein. The above warranty is in lieu of and excludes all other express or implied warranties, including any warranty of merchantability or fitness for a particular purpose.

(3) **LIMITATION OF LIABILITY.** Except as specifically provided in this Agreement, there are no other warranties, express or implied, including but not limited to, any implied warranties of merchantability or fitness for a particular purpose. In no event shall Eschelon be liable for loss of profits, benefits, indirect, consequential or similar damages even if Eschelon has been advised of the possibility of such damages. Eschelon liability from any and money damages in an amount not to exceed the total purchase price for the equipment in question regardless of the form in which any legal or equitable action may be brought against Eschelon.

No action, regardless of form arising out of this transaction under this Agreement may be brought by either party more than one year after the cause of action has accrued, except that an action for nonpayment may be brought within one year after the date of last payment.

(4) **SECURITY INTEREST: RISK OF LOSS.** Eschelon/ATTI reserves a purchase money security interest in the Equipment covered by this agreement in the amount of the unpaid balance of the Purchase Price until the payment in full of the Purchase Price in accordance with terms and conditions set forth on the front of this Agreement. A financing statement may be filed with the appropriate public authorities and the Customer agrees to sign any forms presented to it by Eschelon from time to time to protect Eschelon/ security interest.

Eschelon shall bear the risk of loss of, damage to, the Equipment while at the premises until the Cut-over Date except for loss or damage caused by Customer's negligence, or from improper storage of the Equipment, or storage in areas accessible to unauthorized persons. After the Cut-over Date, all risk of loss of, or damage to, the Equipment shall be borne by the Customer.

(5) **DEFAULT.** If the Customer breaches any provision of the Agreement, including, without limitation, its payment obligations, the Customer shall be in default hereunder, and all unpaid amounts shall, at Eschelon option become immediately due and payable and Eschelon shall have all rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws. Eschelon shall be entitled to recover reasonable attorney's fees and costs of collection associated with enforcing its rights hereunder. ATI may charge interest on overdue accounts at the rate of 1.5% per month, but not in excess of the highest rate permitted by law.

(6) **UNCONTROLLABLE CIRCUMSTANCES.** If the performance of any part of this Agreement by Eschelon/ATTI is prevented, hindered, delayed or otherwise made impractical by reason of any flood, riot, fire, strike, explosion, war or any other cause beyond the control of Eschelon, Eschelon shall be excused from such performance to the extent that it is prevented, hindered or delayed by such causes. All delivery and installation dates and the intended Cut-over Date are approximate, and Eschelon shall under no circumstances be liable for damages - special, incidental or consequential - resulting from delays in deliver, installation or cut-over.

(7) **MISCELLANEOUS.** This agreement is tendered to the Customer for execution by it but shall not be binding upon Eschelon until accepted in writing by a general manager or a corporate officer of Eschelon. Deposit or other acceptance of the payment tendered herewith shall not constitute acceptance of this Agreement. The Customer's offer made hereby shall be irrevocable for a period of 30 days from the Customer's execution hereof. This agreement constitutes the entire agreement between the parties relative to the Equipment and its sale and installation and supersede all prior negotiations and statements. This agreement may not be amended or supplemented except by an instrument in writing executed by the party sought to be charged. In the case of Eschelon such execution must be by a general manager or a corporate officer. This Agreement shall be governed by and construed in accordance with the laws of the state of state in which it was signed. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

Eschelon and Customer each represent that they have the power and authority to enter into this Agreement and that the same constitutes a valid and binding obligation of each party.

(8) **LEASE/FINANCE** If "Lease/Finance" is checked on the front of this Agreement, Eschelon will endeavor to make leasing or financing arrangement on the terms specified. The customer will supply financial information and will execute the leasing or financing company's standard documents. Even if the Equipment is leased or financed, the warranty contained in section 2 shall run to the Customer. In the event the Customer elects to have Eschelon begin installation prior to lease or financing arrangements being obtained, then the Customer agrees to purchase the

equipment according to the cash purchase terms on the front of this agreement if lease or financing arrangements cannot be obtained.

EXHIBIT C

Scope of Work

In addition to the pricing, Eschelon Telecom, Inc. (Eschelon) has outlined the general tasks and assumptions, as we understand them. It is important these are correct and complete, and that the City of Sherwood understands all the information contained in this document will form the Scope of Work Agreement between the City of Sherwood and Eschelon relating to this matter.

TASKS

Eschelon will provide and install the equipment outlined on the attached List of Equipment. This equipment will provide for the physical installation of NEC's PBX products, the NEC NEAX 2000 IPS telephone system as itemized in this Agreement

Eschelon will write, program, and test the new system level and network level databases. During this task, Eschelon will welcome the City of Sherwood's assistance and allow for the complete evaluation of all system and network parameters.

At each system installation site, Eschelon will provide and install the switch tails between the new PBX and the new MDF.

At each system installation site, Eschelon will install the new Series E DTERM telephones onto existing cable plant and will provide new NEAX dialtone to the existing analog telephones, modems and FAX machines currently being served by the existing systems. Should the existing cable plant be unable to provide the required continuity, Eschelon will install new cable in accordance with its prevailing rate for the requested service after receiving approval from the City of Sherwood to do so.

At each system installation site, Eschelon will provide the City of Sherwood with a completed Job Specification upon our completion of the project. Eschelon will work with the City of Sherwood to formulate an acceptable implementation schedule of events.

Eschelon will warranty the proposed and provided equipment for one year from date of system activation at no additional charge to the City of Sherwood. Years two through five shall include the NEC extended warranty on equipment.

ASSUMPTIONS

Eschelon is to provide labor, expertise, and the equipment and material outlined in this Agreement in order to complete the tasks specified.

Eschelon will not complete any civil or structural construction tasks (including cable pulling or core drilling), and we will be provided with switchrooms and storage spaces which meet generally accepted industry standards with respect to power, lighting, temperature, humidity, floorspace, access, and general overall working conditions, etc.

Eschelon understands the unique circumstances associated with this project and have engineered it taking these circumstances into account.

Eschelon anticipates the ability to become involved in a thorough discussion relating to the actual timeframes, working conditions, and overall implementation and if required, being able to negotiate price adjustments (change orders) based upon anticipated vs. actual conditions.

The City of Sherwood will provide Eschelon access to on-site employees (or groups of employees) who will interface with our project manager. This person(s) will be involved with the installation and should be able to provide us with database and other information and access allowing us to properly install, test and activate the equipment.

TIME LINE

Eschelon will install the NEC NEAX 2000 IPS solution in phases, determined by both Eschelon Project Managers and representatives from the City of Sherwood. The first phase will be the system for the new police station that must be completed by November 1, 2002. The next logical phase will be the City Hall, which is scheduled to install within 90 days of the Police Station completion. Public Works will install when the facility is available, after both the Police Station and City Hall are complete.

IN SUMMATION

Eschelon understands the unique and stated circumstances surrounding the installation of this equipment. We at Eschelon firmly believe our staff, experience, and commitment to the NEC product line makes us far and away the most qualified dealer distributing, installing, and maintaining this product in the Nation.

Thank you for your award, we look forward to a successful implementation.

EXHIBIT D

InProtect

**NEC AMERICA, INC. CORPORATE NETWORKS GROUP SPONSORED
EXTENDED SYSTEM PROTECTION PLAN
CUSTOMER CONTRACT**

*(Terms and conditions between NEC AMERICA Associate Eschelon Telecom,
Inc. and Customer)*

The following terms and conditions reflect the Extended System Protection Plan's contract parameters between NEC America, Inc. and (NECAM) Associate, Eschelon Telecom, Inc. and the CUSTOMER (end user). These terms and conditions must be provided to the customer upon the sale of an NEC system and the Extended System Protection Plan and must become a part of the contract between Eschelon Telecom, Inc. who is implementing the plan, and the customer who is purchasing the plan. A copy of these terms and conditions must be provided to the customer by Eschelon Telecom, Inc. in order for the plan to be valid with the NECAM Corporate Networks Group (CNG)

ASSOCIATE NAME: Eschelon Telecom, Inc./ START DATE: _____

CUSTOMER NAME: _____ SITE
NUMBER: _____

PERIOD OF COVERAGE

This Agreement shall commence on the date of system installation as stated on a properly executed Site Registration/Software License Agreement or sixty days from the date of shipment from NECAM to Eschelon Telecom, Inc. whichever occurs first, and shall be for a term of five (5) years from such date.

EQUIPMENT ELIGIBLE FOR COVERAGE

To be eligible for warranty coverage under this Agreement, the new NEC system hardware components and eligible station terminals (Consoles and Dterm Series III telephones) must meet the following requirements.

1. The system and all of its components must be purchased from and installed by a NECAM Corporate Networks Group authorized ASSOCIATE (*Eschelon Telecom, Inc.*).
2. All components must have all applicable serial numbers (bar codes) properly registered with NECAM by the authorized NECAM ASSOCIATE *Eschelon Telecom, Inc.* who is installing the system or replacing the component.
3. The system must have been, and presently receiving manufacturer recommended service and maintenance, performed by a NECAM authorized ASSOCIATE (*Eschelon Telecom, Inc.*).

ESCHELON TELECOM, INC. RESERVES THE RIGHT TO REFUSE WARRANTY COVERAGE ON ANY HARDWARE COMPONENTS OR TELEPHONES, WHICH ARE NOT ELIGIBLE FOR WARRANTY COVERAGE UNDER THIS AGREEMENT.

SERVICE PROVIDED BY ASSOCIATE

As an authorized *NECAM ASSOCIATE, Eschelon Telecom, Inc.* shall repair or replace all hardware components found to be defective to ensure that such components are performing in good working order. Parts that are replaced shall become the property of *Eschelon Telecom, Inc.*. *Eschelon Telecom, Inc.* shall register the serial numbers (bar codes) of all replaced components. Replacement components may be new or reconditioned in accordance with all procedures or requirements of *NECAM*. All replacement components shall be warranted for the remaining term of this Extended System Protection Plan.

WARRANTY

The *NECAM ASSOCIATE, Eschelon Telecom, Inc.* warrants that all services will be provided in a workman-like manner. The customer's sole remedy for breach of this warranty is repair or replacement of the defective hardware component or pro rata refund of the price paid for such warranty.

THIS IS THE EXCLUSIVE WARRANTY RELATING TO HARDWARE COMPONENTS AND SELECTED NEC TERMINALS AND NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, SHALL APPLY. THE ASSOCIATE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXCLUSIONS FROM THIS WARRANTY

The following services are not included under this *NECAM* Extended System Protection Plan:

1. Component replacement and/or services which, are required due to misuse, abuse, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (i.e. lightning, water, shock damage, improper storage, transport or handling, or failure of components or supplies not furnished by *Eschelon Telecom, Inc.*
2. Component replacement and/or services which are required due to unauthorized attempts by persons not authorized by *NECAM* to provide service to repair, maintain, or modify the hardware components covered by this Agreement.
3. Repair or replacement of third-party components or peripherals that are installed with, mounted within, attached to, or integrated with the new NEC system and is not manufactured by *NEC, NECAM,* and/or the *CNG*.
4. *NECAM ASSOCIATE, Eschelon Telecom, Inc.* labor and materials that are required in the servicing of the NEC system and the replacement of components covered under the Extended System Protection Plan.
5. Any services provided or components replaced that are excluded by this Agreement and provided at the request or with the agreement of the Customer shall be paid for by Customer based on current rates for materials and labor in effect when the service is provided.

TRANSFER AND ASSIGNMENT

This Extended System Protection Plan agreement is not transferable by Customer and may be enforced only by the original end-user purchaser, except with the consent of *Eschelon Telecom, Inc.*, and upon payment, by transferee, of any applicable transfer fee and execution of required documentation confirming the terms of such assignment. The customer shall have the right to terminate or assign this Agreement immediately upon any material change in the status of *Eschelon Telecom, Inc.* as an authorized *NECAM ASSOCIATE* with respect to the covered hardware components. In such event, *Eschelon Telecom, Inc.* hereby consents to the assignment of this Agreement to a then currently authorized *NECAM ASSOCIATE*. In the event of breach by *Eschelon Telecom, Inc.* of any of its obligations under this or any other agreement between customer and *Eschelon Telecom, Inc.* Customer shall also have the right to effectuate the assignment of this Agreement to another authorized *ASSOCIATE* upon payment of any applicable transfer fee to *NECAM* and acceptance of such assignment by such other *ASSOCIATE*. *Eschelon Telecom, Inc.* hereby consents in such event to the assignment of this Agreement.

LIMITATION OF LIABILITY

The Customer should keep for their own protection copies of all software and data files that could be affected by a hardware malfunction.

IN NO EVENT SHALL ASSOCIATE OR NECAM BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA, THE CONFIDENTIALITY OF DATA, LOSS OF SOFTWARE, LOSS OF USE, LOSS OF REVENUE OR PROFITS, OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES. THIS LIMITATION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT OR TORT.

GENERAL PROVISIONS

This Extended System Protection Plan agreement sets forth the entire understanding of the parties with respect to the subject matter of the extended hardware warranty. Any amendment must be in writing signed by the parties.

WHEREFORE, the parties have executed this agreement by their duly authorized representatives.

CUSTOMER: _____ ASSOCIATE: Eschelon
Telecom, Inc.

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT E

**NEC America Software License Attachment
&
NEC Customer Software License Agreement**

These documents are multi-copy carbon forms and therefore not available as electronic documents.

Hard copies are available.