



RESOLUTION

APPROVING A THREE-YEAR UTILITIES CONTRACT WITH BAYRING COMMUNICATIONS FOR THE PROVISION OF LEASED CENTREX VOICE LINES

CITY OF NASHUA

In the Year Two Thousand and Seven

RESOLVED by the Board of Aldermen of the City of Nashua that the attached three-year utilities contract with BayRing Communications for the provision of leased Centrex voice lines is hereby approved. The funding source for FY 2008 will be Account No. 506-31005 "Telecommunications – Telephone, Basic Service Charges".



STANDARD TERMS AND CONDITIONS

THESE STANDARD TERMS AND CONDITIONS ("Standard Terms") shall apply to all Service Agreements executed with FREEDOM RING COMMUNICATIONS L.L.C. d/b/a BAYRING COMMUNICATIONS ("BayRing") and are hereby incorporated into the Agreement.

1. Definitions

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

"Confidential Information": Any non-public information regarding the business of the other party provided to either party by the other party where such information is marked or otherwise communicated as being "proprietary", "confidential" or the like.

"Party" or **"Parties"** BayRing, Customer or both, as the context requires.

"Products": The equipment, materials or services to be sold, licensed or leased to Customer pursuant to the Agreement.

"Services": Any communications service offered by BayRing pursuant to the Agreement.

2. Billing and Payment.

2.1 Invoice. BayRing shall submit an invoice to Customer each month, covering charges for the upcoming month and for the previous months. Customer shall make payment to BayRing within thirty (30) days of the invoice date (the "Due Date"). Payment is to be made in U.S. Dollars by wire transfer, company check, cashier's check from a United States bank or such other method as BayRing may specify from time to time. If payment is not received by BayRing by the Due Date, then the late charges set forth below shall be due and payable.

2.2 Late Charges. A late charge of the lesser of (a) one and one-half percent (1.5%) per month or (b) the maximum percentage permitted by law shall be assessed on Customer's delinquent balance of undisputed usage not paid by the Due Date. Such late charge shall be paid with the late payment and shall cover the period commencing with the Due Date and ending with the business day on which such payment is actually received, both inclusive. The payment of any such late charge shall not be deemed an extension of time for payment or a waiver of any failure to remit any other payment due as and when such payment is due. Further, nothing herein shall be construed to constitute a waiver of BayRing's right to declare a default by Customer on account of such delinquency, to terminate the Agreement, draw on any deposit, or to exercise any other rights hereunder or at law or in equity.

2.3 Taxes. Customer shall also be responsible for all federal, state, county and local taxes and fees (if any) related to the Services or Products provided thereunder, including, without limitation, all applicable end-user taxes.

2.4 Adjustments. Requests for billing adjustments must be made within thirty (30) days of the invoice date. Any amount that is determined to have been invoiced in error will be credited against the next invoice. Customer shall not be entitled to withhold payment of any charges which it disputes in good faith. Such amounts shall be reimbursed to Customer by BayRing at such time as it is determined that some or all of the disputed amount was improperly invoiced. BayRing shall return such amounts through a credit on the first invoice following the determination that the amounts were improperly invoiced.

3 Termination and Termination Charges.

3.1 Termination Liability. If Customer discontinues Services or Products prior to the end of an agreed term of the Agreement, or in the event that BayRing terminates delivery of such Service or Products due to a failure by Customer to comply with the terms hereof or of the Agreement, Customer shall pay a termination charge in an amount determined by BayRing. The termination charge shall be no greater than the sum of: (a) the monthly recurring charges and the minimum monthly commitment made in the Agreement that would have been due through the end of the agreed term for the canceled Services or Products, (b) a recapture of any nonrecurring charges waived by BayRing upon installation of the canceled Service or Product, (c) a recapture of any discounts provided to Customer in connection with a Service or Product, and (d) reimbursement for all expenses incurred by BayRing in installing any facilities required to deliver the canceled Services or Products.

3.2 Termination or Suspension of Services. BayRing may terminate the Agreement or suspend the provision of Services, without any further liability to Customer, if: (a) any payment for charges due hereunder or under the Agreement is not received by the Due Date; (b) Customer is in default of any other provision of the Agreement or these Standard Terms; (c) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer has occurred; or (d) any governmental prohibition or required alteration of the Services or any violation of an applicable law, rule or regulation has occurred. Any termination shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination or any termination charge. BayRing may collect attorneys' fees and any and all costs incurred by BayRing in the collection of any unpaid amounts whether or not legal proceedings are instituted.

3.3 Reinstatement of Services. In the event BayRing suspends Services to Customer as provided herein, and Customer subsequently has paid in full all charges then due, including any late charges, BayRing shall not be required to reinstate the Services to Customer until the Customer provides to BayRing assurances in form and nature satisfactory to BayRing of Customer's ability to pay for Services in the future, in addition to all fees, expenses, costs and charges reasonably to be incurred by BayRing in connection with re-instituting the provision of Services to Customer. If Customer fails to make such payment by a date determined by BayRing, Customer will be deemed to have breached these Standard Terms effective as of the original date the Services were suspended and BayRing may exercise any remedies for breach of the Agreement or these Standard Terms available to it at law or as provided herein.

4. NO WARRANTIES. CUSTOMER ACKNOWLEDGES THAT IT IS TECHNICALLY IMPRACTICABLE TO PROVIDE SERVICES FREE OF FAULTS, AND BAYRING DOES NOT UNDERTAKE TO DO SO. BAYRING MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. BAYRING ALSO MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR ENDORSEMENTS REGARDING ANY MERCHANDISE, INFORMATION, PRODUCTS OR SERVICES PROVIDED BY OTHERS FOR BAYRING'S PERFORMANCE HEREUNDER. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. Limitation of Liability.

5.1 General. Neither BayRing nor its affiliates shall be liable to Customer or any third party on account of any claim; loss; lost revenues or profits; consequential, indirect, incidental or punitive damages; costs; court costs and attorneys' fees; expense or liability suffered, incurred or sustained by Customer from any cause arising from or relating to the Agreement, including, without limitation, damages claimed as a result of any temporary or permanent failure of availability or performance of the Services, unless such claim, loss, damage, cost, expense or liability stems from the willful breach or gross negligence of BayRing relating to its obligations under the Agreement. BayRing's entire liability for any claim, loss, damage or expense from any cause arising out of or related to the Agreement, whether based on contract, tort, warranty or on other legal or equitable ground shall be limited solely to money damages and shall in no event exceed sums actually paid to BayRing by Customer for the specific Services giving rise to the claim during the month immediately preceding the occurrence of the event causing the liability under the Agreement or these Standard Terms. Further BayRing undertakes no liability whatever whether in contract, tort, or otherwise for the acts or omissions of other providers of telecommunication service or equipment or for faults in or failures of their service and/or equipment. No action or proceeding against BayRing shall be commenced more than one (1) year after the Service is rendered or Product is shipped.

5.2 Services and Products Subject to Availability. The furnishing of Services and Products under these Standard Terms is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of BayRing's facilities, as well as facilities BayRing may obtain from other carriers to furnish Services and/or Products from time to time as required at the sole discretion of BayRing.

5.3 No Liability for Failure to Transmit Messages. BayRing does not undertake to transmit messages, but offers the use of its Services and Products when available, and, as more fully set forth elsewhere in these Standard Terms and the Agreements, shall not be liable for errors in transmission or for failure to establish connections.

6. Indemnification.

6.1 General. Customer shall indemnify and hold BayRing, its stockholders, officers, directors, employees and agents harmless from any and all loss, cost, damage, expense or liability, including, without limitation, court costs and attorneys' fees, arising out of, in whole or in part, directly or indirectly, intentional violations of any applicable law or governmental regulation by Customer.

6.2 Information Content. Customer acknowledges that BayRing has no control over the content of information transmitted by Customer or its users and that BayRing does not examine the use to which Customer or its users put the Services or the nature of the information Customer or its users send or receive. Customer hereby indemnifies and holds BayRing, its stockholders, officers, directors, employees and agents harmless from any and all loss, cost, damage, expense or liability relating to or arising out of the transmission, reception, and/or content of information of whatever nature transmitted or received by Customer or its users.

7. Confidentiality.

7.1. Each Party expressly undertakes to retain in confidence the terms of the Agreement and these Standard Terms and all information and know-how disclosed in any way to the other that the disclosing Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential (“**Confidential Information**”), and will make no use of such Confidential Information during the existence hereof except as permitted herein. Notwithstanding the foregoing, BayRing may disclose certain Confidential Information as its deems necessary for financing purposes.

7.2. Neither Party shall have an obligation to maintain the confidentiality of information that (a) it received rightfully from another party without restrictions on disclosure prior to its receipt from the disclosing Party; (b) the disclosing Party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence; or (c) is independently developed by the obligated Party.

7.3. Further, the receiving Party may disclose Confidential Information as required by final, unappealable governmental or judicial order, provided such Party gives the disclosing Party prompt written notice prior to such disclosure, and complies with any protective order (or equivalent) imposed on such disclosure, and provides the disclosing Party the option of either seeking a protective order or having its Confidential Information be subject to the same protective orders as may apply to the disclosing Party's own information. Except as otherwise provided herein neither Party shall disclose, disseminate, distribute or use any of the other Party's Confidential Information to any third party without the other's prior written permission.

7.4. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party, shall be used by the receiving Party only for the purpose intended, and such Confidential Information, including all copies thereof, shall be returned to the disclosing Party or destroyed upon the earliest to occur of: (a) the written request of the disclosing Party; or (b) the date of termination of the Agreement. The receiving Party shall promptly provide a written certification the disclosing Party that all Confidential Information has been returned or destroyed.

7.5. Each Party agrees that, without the other Party's written consent, it will not use the name, service marks or trademarks of the other Party or of any of its affiliates in any advertising, publicity releases or sales presentations. No other rights, and particularly licenses, to trademarks, service marks, inventions, copyrights, or patents are implied or granted under the Agreement or these Standard Terms. Neither Party shall take any actions that will in any manner compromise the other Party's registered trademarks and/or service marks.

7.6 The Parties agree that a breach of the terms of this Section 7 would result in irreparable injury to the disclosing Party for which a remedy in damages would be inadequate and that the disclosing Party shall be entitled to seek injunctive relief to prevent the breach or threatened breach, in addition to remedies otherwise available at law or in equity.

8. Service Interruptions, Modifications, and Instructions.

8.1 The Customer agrees that BayRing may, as required in its sole discretion: (a) temporarily suspend the Services for the purpose of repair, replacement, maintenance or improvement of any of BayRing's equipment, software or telecommunication services, and any cabinets or ducts enclosing them; (b) vary the technical specification of the Services for operational or regulatory reasons; or (c) give instructions about the use of the Services resulting from any mandatory government laws and regulations that become applicable. Such instructions shall, while they are in force, be deemed to form part of these Standard Terms. BayRing shall also advise Customer of items that are believed to be reasonably necessary in the interests of safety or for improving the quality of the Services. Where such items would result in a degradation of service or a danger if not complied with, then BayRing reserves the right to introduce them into these Standard Terms, subject to prior notification to Customer.

9. Miscellaneous.

9.1 Regulations. The Agreement and these Standard Terms are made expressly subject to all applicable present and future valid orders and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of the United States of America, any of its states, any foreign government and any governmental agency having jurisdiction. In the event the Agreement or any of these Standard Terms, or any of their respective provisions, shall be found contrary to or in conflict with any such order, rule, regulation or law, the Agreement or these Standard Terms shall be deemed modified to the extent necessary to comply with any such order, rule, regulation or law and shall be modified in such a way as is consistent with the form, intent and purpose of the Agreement and these Standard Terms.

9.2. Force Majeure. Neither Party shall be liable for delays, failures to perform (except the payment of money by Customer), damages, losses or destruction, or malfunction of any equipment or any consequence thereof caused or occasioned by, or due to fire, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment for supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond the Party's reasonable control.

9.3. No Waiver. The failure of either Party to enforce or insist upon compliance with any of the provisions of the Agreement or these Standard Terms or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision hereof.

9.4 Binding Effect; Amendment. The Agreement and these Standard Terms shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns. The Agreement or these Standard Terms may not be amended, except by an instrument in writing, executed by the Parties. No modification or amendment hereto shall be effected by the acknowledgment or acceptance by either Party of any purchase order, sales acknowledgment or other similar form from the other Party.

9.5 Notices. All notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed effectively given and received upon delivery in person, or one business day after delivery by national overnight courier service or by fax transmission with acknowledgment of transmission receipt, or three business days after deposit via certified or registered U.S. mail, return receipt requested, in each case addressed to the Party on the Agreement.

9.6 Assignment or Transfer. Customer may not transfer or assign the use of Services or Products without the express prior written consent of BayRing, and then only when such transfer or assignment can be accomplished without interruption of the use or location of Services or Products. These Standard Terms shall apply to all such permitted transferees or assignees. Customer shall, unless otherwise expressly agreed by BayRing in writing, remain obligated to perform and comply with all terms and conditions of the Agreement, including the Security Agreement, and will remain liable for the payment all charges due under the Agreement. Any attempted assignment of the Agreement without prior written consent of BayRing shall be void, and shall be an event of default that results in termination, including, liquidated damages, reasonable attorneys' fees, and costs, as set forth in paragraph 3.1.

9.7 Merger. The Agreement and these Standard Terms supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants and all inducements to the placing and accepting of the Agreement relied upon by either Party herein, whether written or oral, and embodies the Parties' complete and entire agreement with respect to the subject matter hereof. No statement or agreement, oral or written, made before the execution of the Agreement shall vary or modify the written terms hereof in any way whatsoever.

9.8 Interpretation. The words and phrases used herein shall have the meaning generally understood in the telecommunications industry. The Agreement or these Standard Terms shall be construed in accordance with its fair meaning and not for or against either Party on account of which Party drafted the Agreement or these Standard Terms.

9.9 Third Party Beneficiaries/Parties in Interest. The Agreement has been made and is made solely for the benefits of Parties, and their respective successors and permitted assigns. Nothing herein or in the Agreement is intended to confer any rights/remedies on any third party.

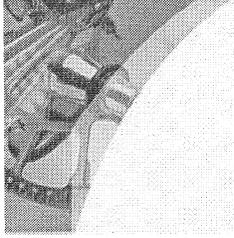
9.10 Application of Tariffs. BayRing may elect or be required by law to file with the appropriate regulatory agency tariffs respecting the delivery of certain Services or Products. If and to the extent such tariffs have been or are filed with respect to Services or Products to be provided to Customer, then the terms set forth in the applicable tariff shall govern BayRing's delivery of, and Customer's consumption or use of, such Services or Products.

9.11 Relationship of the Parties. Each Party hereto shall conduct itself under the Agreement as an independent contractor and not as an agent, partner, joint venture or employee of the other Party, and shall not bind or attempt to bind the other Party to any contract. Nothing contained herein or in the Agreement shall be deemed to form a partnership or joint venture between the Parties.

9.12 Severability. If any term or provision of the Agreement or these Standard Terms is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part(s) thereof shall be stricken therefrom and such provision shall not affect the legality, enforceability, or validity of the remainder of the Agreement or these Standard Terms. If any provision, or part thereof, of the Agreement or these Standard Terms is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

9.13 Further Assurances. The Customer shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of the Agreement or these Standard Terms.

9.14 Governing Law. The Agreement shall be in all respects, governed by and construed and enforced in accordance with the law of the State of New Hampshire, without regard to such jurisdiction's conflicts of laws provisions. Any action to enforce or interpret the terms of the Agreement shall exclusively be instituted and maintained in the State of New Hampshire. Customer hereby consents to the jurisdiction of any state or federal court sitting in the State of New Hampshire and waives any objections to such jurisdiction. In any action or proceeding arising out of the Agreement, the Party prevailing in such action shall be entitled to recover its reasonable attorneys' fees and costs.



December 6, 2007

John Barker
Information Technology Director
City of Nashua
229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019

RE: ADDENDUM TO BAYRING STANDARD TERMS AND CONDITIONS FOR CITY
OF NASHUA

Dear John:

Please consider this letter an Addendum to the BayRing Communications' Service Agreement & Standard Terms and Conditions as outlined at:

www.bayring.com/Documents/Standard%20Terms%20and%20Conditions-REV_6-27-05.pdf

- 1) The language in Section 2.2 regarding the assessing of late charges is not applicable to the agreement between the City of Nashua and BayRing Communications.
- 2) The Service Agreement between BayRing Communications and the City of Nashua is intended to represent an exclusive vendor relationship with regards to the provision of local dial tone services. The termination language in Section 3 is meant to preserve that exclusive relationship for the Term of the Agreement.

If a termination penalty is appropriate under the terms of the agreement, the termination charge shall be no greater than the monthly recurring charges and the minimum monthly commitment made in the Agreement that would have been due through the end of the agreed term for the canceled Services or Products. Further, it is clarified that BayRing may collect reasonable attorneys' fees and costs incurred by BayRing in the collection of any unpaid amounts whether or not legal proceedings are instituted.

Notwithstanding, BayRing Communications will allow the City of Nashua an opportunity to terminate individual services within the Agreement without penalty should the following occur:

- In the event that the City of Nashua determines that a particular service is no longer needed within the network and wishes to disconnect for lack of necessity.
- In the even that the City of Nashua disconnects as a result of the service being folded into an alternative BayRing delivery system (example: IP/SIP or PRI)

- 3) The language in Section 5.1 is modified insofar as the deadline for any action or proceeding against BayRing will be subject to the statute of limitations under State of New Hampshire law.
- 4) The language regarding 'Confidentiality' in Sections 7.1 through 7.4 inclusive shall be deemed inapplicable to the City of Nashua due to the legal obligations incumbent upon the City under State of New Hampshire RSA 91-A 'Access to Public Records and Meetings', RSA 33-A 'Municipal Records', and all other applicable local, state or federal laws and regulations.
- 5) The Agreement between the City of Nashua and BayRing Communications shall incorporate the contract insurance requirements below.

Contractor shall maintain for the duration of the contract all required insurance coverage.

Coverage must be written with an insurance carrier licensed to do business in the State of New Hampshire.

City of Nashua requires thirty (30) days written notice of cancellation or material change in coverage.

Contractor is responsible for filing updated Certificates of Insurance with the City of Nashua Risk Management Dept. during the life of the contract.

The contractor must maintain required limits of coverage for the duration of the contract/project.

The contractor shall provide a Certificate of Insurance with evidence of the following coverage's to the City of Nashua Risk Management Dept. ten (10) days prior to commencing work under the contract document.

Comprehensive General Liability - \$1,000,000 per occurrence/\$2,000,000 aggregate – City of Nashua must be named as an additional insured.

Motor Vehicle Liability - \$1,000,000 combined single limit – City of Nashua must be named as an additional insured. Coverage must include all owned, non-owned and hired vehicles.

Workers' Compensation as required by statute/Employers' Liability of \$100,000/\$500,000/\$100,000.

Professional Errors and Omissions - \$1,000,000.

Any subcontractor used is the agent of the contractor and not the City of Nashua's. Subcontractors are subject to the same insurance requirements as the contractor.

On behalf of everyone here at BayRing Communications, I look forward to providing the City of Nashua reliable, cost-effective telecommunications services.

Sincerely,

David H. Gibson
Director of Business Development