

RESOLUTION 2012 857

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND TELMATE LLC FOR INMATE PHONE SERVICES FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, per resolution 2012 677, section 4.0 Services "the County need not advertise or follow a formal competitive bidding procedure, for service contracts, but rather the county may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost."; and

WHEREAS, the Sheriff's Office has a contract with Telmate, LLC. for inmate telephone services for the term of April 1, 2011 through December 31, 2012 via Resolution 11-179; and

WHEREAS, the Sheriff's Office recommends entering into another personal service contract for 2013 and 2014; **NOW, THEREFORE**,


BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the Benton County Sheriff's Office recommendation and hereby awards the personal service contract to Telmate LLC.; and


BE IT FURTHER RESOLVED, the Board authorizes the Chairman of the Board to sign the attached personal service contract.


BE IT FURTHER RESOLVED, the term of the attached personal service contract commences January 1, 2013 and expires on December 31, 2014.

Dated this 18th day of December 2012.


Chairman of the Board


Member


Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: 
Clerk of the Board

**BENTON COUNTY
PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **Telmate LLC.**, with its principal offices at 234 Front Street, #2, San Francisco, CA 94111, (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

- a. **Terms and Conditions; and**
- b. **Exhibit A, Schedule of Services; and**
- c. **Exhibit B, Schedule of Charges and Payments.**

2. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2013, and shall expire on December 31, 2014. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, Schedule of Services, which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- a. For CONTRACTOR: Kevin O'Neil, President
108 SE 6th Street
Ontario, OR 97914
Phone: (253) 223-9871
Fax: (208) 379-7498
- b. For COUNTY: Jon Law, Commander
7122 W. Okanogan Pl. Bldg B
Kennewick, WA 99336
Phone: (509) 735-6555
Fax: (509) 736-3895

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

- a. A detailed description of the commission to be paid by the CONTRACTOR to COUNTY is set forth in Exhibit B, Schedule of Charges and Payments, which is attached hereto and incorporated herein by reference. COUNTY will receive 59% commission on all revenues generated directly or indirectly from the use of the inmate telephone system installed at the Benton County jail as described in Exhibit B within 45 days of the end of the month in which the call revenue was generated.
- b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- c. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- d. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- e. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any

billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited

to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any Contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section [7] shall survive termination and expiration of this Contract.

- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

8. **INSURANCE**

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance. If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.
- b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury and property damage, which may arise from

any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or Contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

\$2,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Injury
\$1,000,000 Each Occurrence

The commercial general liability policy will contain an endorsement naming the COUNTY, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident
\$1,000,000 Policy Limit for Disease
\$1,000,000 Each Employee for Disease

- c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Commercial Automobile Liability Insurance (CA0001), or equivalent coverage, in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR. Commercial Auto Liability Insurance shall include coverage for owned, non-owned and hire autos. Covered auto shall be designated as "Symbol 1" any auto. CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by Commercial Auto Liability Insurance.

d. Other Insurance Provisions:

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractors. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

e. Verification of Coverage and Acceptability of Insurers:

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have an A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton COUNTY Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability and Workmen's Compensation, shall specifically include the COUNTY as an "Additional Insured" and shall not be reduced or canceled without thirty (30) days written prior notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY, its elected and appointed officials, employees and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance and all written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to:

Benton COUNTY Sheriff's Office
Attn: Julie Thompson
7122 W. Okanogan Place, Bldg. B
Kennewick, WA 99336
(509)735-6555 ext 3273
3. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton COUNTY Risk Manager at the following address: Benton COUNTY Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. **TERMINATION**

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY

may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.
- b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

- a. The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent CONTRACTOR and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section [5] of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited

to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.

- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and

shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless there from to the extent such use is not agreed to in writing by the CONTRACTOR.

- b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall

be governed by the laws of the State of Washington, both as to its interpretation and performance.

- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton COUNTY, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Contract Representatives Section of this Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections [7] and [17]); extended reporting period requirements for professional liability insurance (Section [8(a)]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [26]); Public Records Act (Section [27]) and confidentiality (Section [19]).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [14] of this agreement may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to hold such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section [14].

27. PUBLIC RECORDS ACT


CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 et seq. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

The parties have caused this Contract to be signed by their duly constituted legal representatives.

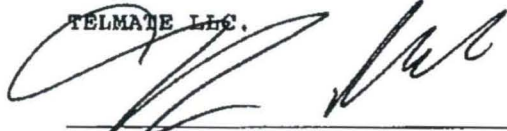
DATED: December 18, 2012

DATED: 01/02/13

BENTON COUNTY


James R. Beaver, Chairman

TELMATE LLC.


Signature
Kevin O'Neil
[Print Name]

Approved as to Form:


Deputy Prosecuting Attorney

EXHIBIT A

SCHEDULE OF SERVICES

1. GENERAL

- a. Provide installation, continuous operation and support of the inmate phone system (system).
- b. The system shall include equipment designed for the correctional environment, and is subject to approval by the COUNTY. Equipment must be non-coin operated, collect call capable and constructed of durable and tamper-free equipment that is suitable for a jail environment. Equipment must contain no removable parts.
- c. CONTRACTOR will install and maintain phones in a manner and at a time that does not interfere with the safe operation of the Benton County Jail.
- d. The installation, troubleshooting, maintenance and regular operation of the system, including but not limited to all customer service and financial transactions, will be the responsibility of the CONTRACTOR.
- e. Upon expiration or termination of this Contract the parties agree that the CONTRACTOR will work with any service provider needing to integrate with the system and provide this integration service at no cost to the COUNTY. This includes ensuring a smooth transition, including but not limited to, providing data (e.g. 'do not record' phone numbers, inmate account information, recorded call data) from the existing system at no cost to the COUNTY.

2. SYSTEM PERFORMANCE SPECIFICATIONS

- a. CONTRACTOR shall comply with all Federal Communications Commission (FCC) and state and local requirements and tariffs.
- b. The system shall permit outgoing and station-to-station calls that can be billed to the called party (a.k.a. collect calls) or billed through a phone call prepayment system.
- c. The system shall not allow any incoming calls except those sent from inside the facility by staff during an emergency. These calls would be to facilitate contact with inmates during a disturbance situation.
- d. The system shall have the capability of providing a limited number of free local calls. These calls will be at no cost to the COUNTY.
- e. The system shall allow specific non-recorded calls such as to the Public Defender's Office and other agencies. The COUNTY will work with the vendor to determine these telephone numbers. The CONTRACTOR will preload all known

non-recordable destination call numbers prior to inmate use.

- f. Each phone shall provide an immediate response to the inmate when the handset is off the hook.
- g. The system shall provide the option to identify, flag, and allow three-way or conference calling. The Benton COUNTY Jail staff shall determine if the calls will be allowed or blocked. The CONTRACTOR shall perform 100% suspected three way call screening and report results to the COUNTY within 24 hours of the suspected call having occurred.
- h. The system shall prevent call forwarding.
- i. The system must run on an automated operator platform.
- j. The system shall provide prompts in two (2) languages, including English and Spanish with additional languages added upon request at no charge to the COUNTY.
- k. Call blocking shall be provided by specific number. Blocking functions must be programmable on-site.
- l. The called party shall be able to accept or reject a call from a rotary dial or pulse dial telephone.
- m. The system shall be capable of programmed call duration limits. The system would automatically terminate a call at the time limit set giving at least a thirty-second and fifteen second warning. The capability of providing different time limits for different blocks of inmate phone numbers shall be available. The time limit shall be controllable and adjustable.
- n. The system shall be capable of providing call completion to any point within the continental United States, Alaska, Hawaii, and internationally for all local and inter-exchange carrier calls.
- o. The system shall be capable of announcing to the called party that the collect call is from a correctional institution.
- p. The system shall provide call recording for each and every call made from an inmate phone including those that provide free calls but excepting attorney conversations and other calls deemed confidential by the Benton County Jail. The system shall provide on-line instant access to those recordings via the COUNTY's countywide Area Network.
- q. The system shall provide/allow for access to any investigators the COUNTY authorizes outside the network.
- r. The system shall store all recordings over the term of the Contract, which must be accessible instantly. The system must be compatible with the COUNTY's Wide Area Network and the MS Windows 2000, NT, XP, VISTA and Windows 7 operating systems that will access the recordings, download them for playing, play them, and store them locally.
- s. The system shall include a case management function that will allow grouping calls, annotating the records with pertinent information for a criminal case, and verifying

the accuracy of the recordings. The COUNTY may, at its option, permit other agencies, such as the District Attorney's Office, to use the client software to access our recordings. The COUNTY may charge other agencies for this service.

- t. The system shall integrate an announcement with the phone system, announcing to both the caller and the called party that the call will be recorded and monitored. The system shall require positive acceptance by both parties to monitoring and recording prior to allowing connection.
- u. The system shall provide on-line access to billing name and address records for investigative purposes.
- v. All products offered by the CONTRACTOR, as well as third party components, must be current products approved by the COUNTY.
- w. The system will include an alert system that will detect calls made to restricted numbers, calls made by restricted PINs, or calls made from restricted phones. The system will have the capability of automatically calling investigators and offering live monitoring of such calls.
- x. The system shall have an inmate voice recognition feature used at the start of each call to ensure the identity of the inmate prior to connecting a call.
- y. The CONTRACTOR shall keep the facility up-to-date on customer and technical support issues via E-mail notification.
- z. The system will issue an inmate PIN automatically on detainee intake through a link to the COUNTY's existing CASE management system. CONTRACTOR will provide the link to the CASE system and no COUNTY staff time will be required to administer the issuance of the PIN. The system will also close or inactivate the detainee's account upon release.
- aa. The system must provide for the immediate disconnection of a call that is being monitored by simple point and click from monitoring interface.
- bb. The system must be self-diagnostic and automatically create "trouble tickets." These "trouble tickets" must be automatically delivered to support centers within two minutes of detected trouble.
- cc. The recording system shall allow investigators to attach notes to each recorded call record.

3. MANDATORY VENDOR COSTS

- a. The CONTRACTOR shall be responsible for all carrier-related cost and performance issues, including but not limited to inter-exchange carriers (IEC), long distance carriers, and primary inter-exchange carriers (PIC).
- b. All equipment and labor necessary to fulfill the requirements of this Contract shall be provided by the CONTRACTOR at no cost to the COUNTY. This includes, but is not limited to, all items necessary for proper

installation, phone jacks, conduit, cabling, and related labor. Upon termination of the Contract, all wiring and added equipment (other than phones) shall become the property of the COUNTY.

- c. The CONTRACTOR is responsible for the full cost of installing, providing, and maintaining tariffed telephone line access services for all inmate phone service.
- d. The CONTRACTOR shall be responsible for all costs to ship and transfer the equipment/services supplied for initial installation, and any subsequent preventative and repair maintenance. All equipment shall be properly packaged or otherwise protected during shipment.
- e. The CONTRACTOR shall add additional inmate telephones to the system during the term of the Contract upon receipt of request from the COUNTY. Additions will be at no cost to the COUNTY.
- f. The CONTRACTOR shall move or disconnect inmate telephones at the request of the COUNTY at no charge to the COUNTY.
- g. The vendor shall provide to the COUNTY an annual financial audit at the CONTRACTOR's expense to ensure that revenues and compensation associated with the system have been accurately reported and paid. The audit shall be provided to the COUNTY within 30 days of the end of the COUNTY's fiscal year.

4. EQUIPMENT SPECIFICATIONS

- a. Telephones as designated and installed shall be Americans with Disabilities Act (ADA) and Title 24 compliant.
- b. All telephones shall be surface mount compatible with standard telephone company mountings.
- c. All telephone instruments shall be approved by the COUNTY and comply with FCC regulations.
- d. All telephone instruments shall be equipped with a metallic tamperproof keypad.
- e. Each telephone instrument shall have touch-tone keypads.
- f. All telephone instruments shall be equipped with an armored handset cord. The length of the cord is to be eighteen (18) inches with steel cable on the inside, unless noted otherwise by the COUNTY.
- g. Each telephone instrument shall be equipped with an on and off shutoff capability to be located at each local control room or area as designated by the COUNTY. System shall allow remote access to shut down individual phones and phones by regions within the facility.
- h. All telephone instruments are to be specifically designed for their resistance to the abuse found in correctional facilities.

5. MAINTENANCE SPECIFICATIONS

- a. The CONTRACTOR shall provide all necessary labor, parts, materials, and transportation to maintain all proposed telephones and related services equipment in good working

order, and in compliance with the equipment manufacturer's specifications throughout the term of the Contract. No charge may be made to the COUNTY for maintenance of the system.

- b. The CONTRACTOR shall provide telephone equipment personnel who have been fully trained, manufacturer certified, and/or qualified on the equipment and software to be serviced.
- c. The CONTRACTOR shall be responsible for all ongoing and routine maintenance of the system hardware and software.
- d. The CONTRACTOR shall maintain a log for phone inspections and maintenance work performed, and shall submit the log annually or as required by the COUNTY.
- e. Maintenance service representatives shall be available for the COUNTY's site where the CONTRACTOR's equipment, services, and/or software are installed.
- f. Maintenance personnel supporting the equipment, services, and/or software shall have at least six (6) months experience servicing the equipment, services, and/or software provided.
- g. An adequate inventory of spare parts shall be kept to be immediately available for emergency repairs to allow for the necessary operation of the proposed equipment, services, and/or software.
- h. Maintenance personnel shall respond and resolve normal repair requests within six (6) hours from time of notification and, if necessary, be on-site within six (6) hours, Monday through Friday, 0800 to 1700 hours.
- i. For normal repair requests on weekends, 1700 hours Friday to 0800 hours Monday, COUNTY holidays, and for Monday through Friday from 1700 to 0800 hours, the vendor shall isolate and correct any problem within twelve (12) hours. In the event that a problem cannot be solved within the twelve-hour period, the CONTRACTOR must contact the COUNTY and propose a plan to correct the problem. The proposed solution must meet with the satisfaction and agreement of the COUNTY.
- j. Maintenance personnel shall respond to an emergency request and be on-site, if necessary, within four (4) hours from the time of notification from the COUNTY. An "emergency request" will be limited to events that cause the non-operation of over 50% of the phones, the lack of ability to record or conference in third parties, any single site becoming non-operational, or any other failure that severely limits the proper use of the phone system.
- k. CONTRACTOR shall maintain a toll-free customer service telephone number which shall be answered 24 hours a day, 7 days a week by a live operator capable of responding to the COUNTY's customer service needs.
- l. The CONTRACTOR shall notify the COUNTY at least five (5) working days prior to any planned occurrence that may

result in a service interruption to any inmate phone or service that lasts in excess of fifteen (15) minutes. The CONTRACTOR shall perform any work required at a time mutually agreeable with the COUNTY.

- m. The CONTRACTOR shall provide a point of contact for handling complaints, and shall provide escalation names and phone numbers to the COUNTY within ten (10) working days after award of Contract. The CONTRACTOR shall provide the COUNTY with regular updates to this information over the course of the Contract.
- n. All service requests, other than repair or emergency requests shall be completed within two (2) weeks from the time the request is made to the CONTRACTOR unless otherwise requested or negotiated.
- o. Upgrades shall be kept current with other correctional agency upgrades. When another agency's system is upgraded during the term of the COUNTY's Contract, then the COUNTY's system shall be upgraded to the same level as the other institution. These upgrades will be at no cost to the COUNTY.

6. REPORTING, TRAINING and MONITORING REQUIREMENTS

- a. CONTRACTOR shall provide monthly management reports on inventory, revenues, and compensations on a per-telephone number basis to be delivered to the COUNTY by the 15th day of the month following the previous month's billing.
- b. Vendor shall provide training as needed throughout the course of the Contract at no cost to the COUNTY. Training shall be conducted by professional instructors, be targeted to the needs of the staff in the training session, and include useful reference materials.
- c. The system shall provide live monitoring of any call made from any phone within the detention facility, except those excluded by attorney client privilege or other calls deemed private by Jail staff.
- d. Calls excluded from monitoring shall be identical to those excluded from recording. Excluded calls shall be automatically blocked from monitoring by anyone using the system.
- e. This system shall allow call monitoring from computers within the detention facilities and from any remote phone access that Jail staff approve, and shall allow Benton COUNTY Jail staff to deny access to individuals or from locations that it chooses.
- f. Each control station within the facility will be provided a mechanical 'kill switch' which will instantly terminate a call. The switch will be provided and maintained by the vendor. This switch will be in addition to any software functionality that provides the same function.

7. CHARGES, REFUNDS and COMPENSATION REQUIREMENTS

- a. The CONTRACTOR shall be responsible for the collection of charges for fraudulent or otherwise uncollectable calls.
- b. The CONTRACTOR shall be responsible for any and all billing disputes, claims, or liabilities that may arise in regard to its provision of services under this Contract.
- c. Billing charges shall begin no sooner than the time the calling party is connected to and the called party accepts the call. Charges shall be terminated when the call ends. Incomplete calls, such as network intercept recordings, busy signals, no answers, refusal of calls, etcetera, shall not be billed.
- d. In instances where a call is terminated by means other than one of the calling parties hanging up or the call timing out, the CONTRACTOR will investigate the terminated call upon inmate or customer request and refund the full charges associated with the call to the paying party if the call was billed as a fixed duration prepaid call or the connection fee if the call was a connection their representatives will be refunded only after approved by the Benton COUNTY Jail staff. Under no circumstances will the COUNTY be financially liable for refunds on terminated calls.
- e. The CONTRACTOR will be fully responsible for providing refunds on prepaid accounts to any and all system customers. All payments to and refunds from the system accounts will occur without any COUNTY employee participation.
- f. The CONTRACTOR shall prepare mandatory monthly reports which are to be sent every month to the COUNTY employee listed in Exhibit B and contain the following information:
 - i. Customer account number
 - ii. Total calls by telephone number
 - iii. Total minutes for local exchange service by telephone number
 - iv. Total minutes for inter-exchange service by telephone number
 - v. Total station revenue by telephone number
 - vi. Total revenue by account
 - vii. Compensation paid by account
 - viii. Billing time period covered
 - ix. One-page monthly summary report that includes the following:
 - 1. Each account number
 - 2. Each account name
 - 3. Total calls per account
 - 4. Total minutes per account
 - 5. Total revenue per account
 - 6. Total compensation paid per account
 - 7. Billing time period covered

8. OTHER REQUIREMENTS

a. Operating Guidelines

- i. COUNTY accepts the Products (defined below) subject to the terms and conditions contained in this Contract.
- b) "Products" for purposes of this Agreement, shall include the following:
 1. Inmate Communication Services
 2. Kiosk Products
 3. Commissary ordering units
 4. Facility Information System
 5. Any and all other products marketed and/or distributed by Telmate for Customer
- b. Provide integration with other software and hardware units such as Intergaph I/Leads, commissary ordering kiosks such as Keefe, COUNTY banking service provider and COUNTY network.

EXHIBIT B
SCHEDULE OF CHARGES AND PAYMENTS

In exchange for the exclusive right to install and maintain a secure inmate telephone and call monitoring system in the Benton County Jail, the CONTRACTOR agrees to reimburse the COUNTY at the below cited commission rate for all revenues generated directly or indirectly from the use of the inmate telephone system installed at Benton County Jail. The only permissible exclusions to commissionable revenues are State and Local taxes if they are passed through to the billed parties without markup.

TERM COMMISSION RATE 59%

CONTRACTOR agrees to the following initial Prepaid and Collect call rates:

Prepaid and collect (shared rate)

Call Category	Connect Fee	Per Minute Rate	Price for a 15 Minute call
Local	\$4.75	\$0.00	\$4.75
Intra LATA	\$4.75	\$0.00	\$4.75
Inter LATA	\$4.75	\$0.00	\$4.75
InterState	\$6.75	\$0.00	\$6.75
International	\$10.00	\$0.00	\$10.00
Voicemail	\$1.25	\$0.00	n/a

COUNTY and CONTRACTOR agree that prepaid and collect call rates may be changed by mutual written consent over the term of the Contract.

Both parties agree that changes to the commission rate, other than those described herein, will require an amendment to this Contract, but adjustments to the Prepaid and Collect call rates alone will not require an amendment.

The COUNTY and CONTRACTOR must agree in writing on any vendor marketing incentives or discounts before they are offered to the inmates or the called parties. These incentives may include but are not limited to promotional discounts or free minutes.

Compensation payments on gross revenues for a calendar month shall be paid monthly within forty-five (45) days of the end of the month in which call revenue was generated. Payments and reports shall be mailed to:

Benton County Sheriff's Office
Attn: Julie Thompson
7122 W. Okanogan Place, Building B
Kennewick, WA 99336