



County of Santa Barbara

BOARD OF SUPERVISORS

Minute Order

February 2, 2016

Present: 4 - Supervisor Carbajal, Supervisor Farr, Supervisor Adam, and Supervisor Lavagnino
Absent: 1 - Supervisor Wolf

SHERIFF

File Reference No. 16-00082

RE: Consider recommendations regarding Inmate Calling Solutions Contract for Inmate Telephone Services, as follows:

- a) Approve and authorize the Chair to enter into a contract on behalf of the County of Santa Barbara with Inmate Calling Solutions (ICSolutions) for the period effective from December 06, 2015 to December 05, 2018, with the option of two one-year extensions for inmate telephone services; and
- b) Find that the proposed actions do not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to 14 CCR 15378(b)(5), in that they are government administrative activities that will not result in direct or indirect changes to the environment.

A motion was made by Supervisor Carbajal, seconded by Supervisor Lavagnino, that this matter be Acted on as follows:

- a) Approved; Chair to execute; and
- b) Approved.

The motion carried by the following vote:

Ayes: 4 - Supervisor Carbajal, Supervisor Farr, Supervisor Adam, and Supervisor Lavagnino

Absent: 1 - Supervisor Wolf

Inmate Telephone Service Agreement

Santa Barbara County Sheriff's Office

Inmate Calling Solutions, LLC d/b/a ICSolutions with its principal place of business located at 2200 Danbury Street, San Antonio, TX 78217, the Inmate Telephone Service Provider (hereinafter, ITSP) and the County of Santa Barbara, a political subdivision of the State of California (County) by and through the Santa Barbara County Sheriff's Office with its principal place of business at 4434 Calle Real, Santa Barbara, California hereby execute this Inmate Telephone Service Agreement (Agreement), effective on February 2, 2016.

1 AGREEMENT

- 1.1 County grants ITSP the exclusive right and privilege to install and operate all inmate telephones, visitation telephones and related telephone equipment at County's Facilities detailed in **Attachment B – Facility Specifications** (Facilities). ITSP shall, at no cost to County, provide all wiring for the inmate and visitation telephones, install the inmate and visitation telephones and the related hardware and firmware/software specifically identified herein, to enable inmates at the Facilities to make free, collect, pre-paid and/or debit local, long distance and international calls and visitation sessions from the Facilities pursuant to the terms set forth herein.

2 TERM

- 2.1 This Agreement shall commence upon the Effective Date above and remain in force for an initial term of 3 years with an expiration date of February 2, 2019 (Initial Term). This Agreement shall not bind, nor purport to bind, County for any contractual commitment in excess of the Initial Term. However, County, at its sole option, shall have the right to renew this Agreement for 2 additional, 1 year terms or on a 6-month basis (not to exceed 12 months) prior to expiration of the Initial Term or renewal term of this Agreement. In the event County exercises such right, all terms and conditions, requirements, and specifications of this Agreement, and any Amendments, shall remain the same and apply during the renewal term(s). This Agreement will not automatically renew.

3 ITSP RESPONSIBILITIES

- 3.1 ITSP shall agree to all terms and conditions set forth in this Agreement, and ITSP shall agree to the specifications, including, but not limited to, the features and functionalities of the Inmate Telephone System (ITS) listed in **Attachment A – ITSP Responsibilities & Inmate Telephone System Features and Functionalities**. If County designates an agent to act on County's behalf (Designated Agent), ITSP shall follow County's direction in working with such Designated Agent.

4 SURETY BOND

- 4.1 ITSP shall furnish a bond in the form of a Surety Bond, Cashier's Check, or Irrevocable Letter of Credit, issued by a surety company authorized to do business in the State of California, and payable to County. The Surety Bond is due within 10 calendar days after the Agreement execution date and prior to any installation work or equipment delivery. The Surety Bond shall be in the amount of \$150,000.00 and will be retained during the full period of the Agreement and/or renewal term(s). Personal or company checks are not acceptable. The Agreement number (if applicable) and/or dates of performance must be specified on the Surety Bond. In the event that the County exercises its option to extend the Agreement for an additional period, ITSP shall be required to maintain the validity and enforcement of the Surety Bond for the said period, pursuant to the provisions of this paragraph, in an amount stipulated at the time of the Agreement renewal.

5 ITSP COSTS, TAXES AND FEES ON SERVICES

- 5.1 It is expressly understood that the County is not responsible in any way, manner or form for any of ITSP's costs, including but not limited to taxes (including sales tax), shipping charges, network charges, insurance, interest, penalties, attorney fees, liquidated damages, licenses, fees, tariffs or other costs related to ITSP's services.
- 5.2 ITSP agrees that it is entirely responsible for calculating, collecting and remitting all fees and taxes, including sales tax where applicable, on all services and items provided to the inmates. This includes all taxes as applicable for collect, debit, pre-paid and any other calls or services provided.

6 COMPENSATION, PAYMENT AND REPORTING

- 6.1 ITSP shall provide County an upfront financial incentive in the amount of \$100,000.00 within 10 days of the Effective Date.
- 6.2 ITSP shall pay County 65.1% commission on all Gross Revenue generated by and through the ITS consisting of all compensation, earnings, gain, income, generated revenue, payment, proceeds or receipts paid to or received by ITSP that are in any way connected to the provision of ITS service pursuant to the RFP and this Agreement. Gross Revenue includes, by way of example and not limitation, all the following: all surcharges, per minute fees and any additional fees and/or charges generated by the completion of all calls (including any combination of free, collect, debit, and pre-paid Local, Intralata/Intrastate, Intralata/Interstate, Interlata/Intrastate, Interlata/Interstate, and International calls), additional fees and/or charges added to the total cost of a call or added to the called party's bill or any other compensation received by ITSP. ITSP shall pay commission on total Gross Revenue (as defined above) before any deductions are made for unbillable calls, taxes, fraudulent calls, LEC adjustments or any other ITSP expense.
- 6.3 Any additional fees and/or charges to be added to the called party's bill or paid by the called party (including those associated with establishing/funding pre-paid collect accounts) for inmate telephone calls from the Facilities must be approved by County prior to implementation. The County and ITSP shall mutually agree upon the method for compensation associated with the additional charges/fees due to County.
 - 6.3.1 Any fees and/or charges implemented without the County's express written consent shall incur a fine per day of \$350.00. The fine per day shall be effective from the date that ITSP implemented the unapproved additional fees and/or charges through the date ITSP discontinues the unapproved additional fees and/or charges.
 - 6.3.2 The County shall notify ITSP of any unapproved additional fees and/or charges of which the County becomes aware and shall provide ITSP with an invoice for the total fine due, for which ITSP shall remit payment to County within 30 days.
 - 6.3.3 Additionally, the ITSP shall, within 30 days, refund each called party and/or inmate for any unapproved additional fees and/or charges from the date the charges/fees were implemented until the date the charges/fees were discontinued.
 - 6.3.4 Should the County approve the additional fees/charges to remain in effect for the remaining term of this Agreement and any renewal terms, County and ITSP shall work together to mutually agree upon the compensation structure to be paid to County for the additional revenue generated for ITSP.

- 6.4 Notwithstanding the foregoing, Gross Revenue does not include the following items:

- 6.4.1 Pre-Paid Collect Fees. Pre-paid collect fees are defined as fees imposed on called parties who set up and/or fund a pre-paid collect account with ITSP (directly or through a third party) to accept calls. Pre-paid collect fees shall not be applied on an individual call basis. All pre-paid collect fees must be approved by the County and are subject to the penalty defined above if not approved by the County in advance. The amount of the funding fee approved by County is specified in **Attachment C – Calling Rates and Commissions.**
- 6.4.2 Required regulatory charges and taxes that are intended to be paid by the called party or inmate and then remitted 100% by the billing party to the appropriate governmental agency.
- 6.4.3 A “Free” call shall be defined as a call not generating any revenue for ITSP. Calls to telephone numbers that appear on the free call list supplied by the County or from the inmate telephones authorized by the County to process free calls shall not generate revenue for ITSP and shall not be commissionable to the County. Only those numbers designated by County on the free call list or from inmate telephones in designated by County shall be marked as “Free” in the ITS and designated as such in the Call Detail Records.
 - 6.4.3.1 In the event ITSP receives revenue or compensation, notwithstanding the source, from any third party related to a completed free call, authorized or unauthorized by County such revenue shall be included in Gross Revenue and commissionable to the County.
 - 6.4.3.2 ITSP agrees to provide Pro Bono calling services for Immigration and Customs Enforcement (ICE) detainees housed at County’s Facilities. Pro Bono calls will be provided at no cost to County and shall be completed as Free calls to consulate telephone numbers specified by County. ITSP shall accept County’s direction for how Pro Bono calling services are configured via the ITS at County’s Facilities. It is understood and agreed that ITSP will not pay any commissions or other remuneration on any ICE Pro Bono calls.
 - 6.4.3.3 Complimentary calls are not commissioned and shall be limited to one 60-second call per unique telephone number. Complimentary calls shall be designated as “Admin Setup” in the Call Detail Records.
- 6.5 A call is deemed complete, and considered part of Gross Revenue (as described above), when a connection is made between the inmate and the called party, whether such connection is established by positive acceptance or by live or automated machine pick-up (e.g. when the ITS considers a tone from an answering machine, voicemail etc. as acceptance). The call shall be deemed complete and commissionable regardless if ITSP can bill or collect revenue on the call.
- 6.6 ITSP may, upon request from the County, utilize the onsite commissary provider to distribute and charge for inmate telephone services, provided there is a written agreement regarding the form and manner of how the associated taxes are to be collected and remitted. In the event the commissary provider collects and remits taxes for inmate telephone services, the following shall apply:
 - 6.6.1 ITSP is solely responsible for obtaining a resale certificate from the commissary provider;
 - 6.6.2 ITSP is responsible for obtaining all proper documentation from the commissary provider; and
 - 6.6.3 ITSP’s agreement with the commissary provider must address the requirements set forth in this section.
- 6.7 Commission for debit calls shall be based upon total ITS Gross Revenues, as defined above, generated from debit purchased or call usage and is payable under **Section 6 – Compensation, Payment and Reporting.** By the 5th day of the month following the month of traffic, ITSP shall submit a monthly invoice

and corresponding debit purchase or usage report to the County and/or its Designated Agent for the full amount of debit purchased or used (less any issued refunds) for the prior traffic month.

- 6.8 Commission for pre-paid cards shall be based on the face value of the pre-paid cards purchased by the County. Commission shall be due to the County in the traffic month the County placed the pre-paid card order and payable under **Section 6 – Compensation, Payment and Reporting**.
- 6.8.1 ITSP shall invoice the County the full amount of the pre-paid cards purchased within 15 days of receipt of the pre-paid cards. County shall pay such invoices within 30 days of receipt.
- 6.8.2 Should the County cancel the pre-paid card services at the Facilities, ITSP shall deactivate and refund to the County the amount of any unused pre-paid cards which have a full balance at the time of the cancellation of the pre-paid card program.
- 6.9 ITSP shall impose a monthly collect call threshold of \$75.00 per unique telephone number. The monthly collect call threshold shall reset to \$75.00 every 30 days. Any changes to the monthly collect call threshold must first be approved by County; unauthorized changes shall be subject to a daily fine of \$750.00 from the day the unauthorized change was implemented through the day the change is resolved by ITSP as approved by County.
- 6.10 ITSP shall provide monthly commission payments and traffic detail reports to the County on or before the 20th day of the month following the traffic month. Commission payments shall be sent via wire transfer and traffic detail reports shall be sent electronically in an exploitable format to County or its Designated Agent.
- 6.11 Traffic detail reports shall include a detailed breakdown of all traffic, including but not limited to all collect, pre-paid and debit calls and for each inmate telephone at the Facilities:
- 6.11.1 Facility Name;
 - 6.11.2 Facility Identification Number/Site Identification Number;
 - 6.11.3 Facility Address (Street, City, State and Zip);
 - 6.11.4 Automatic Number Identifier;
 - 6.11.5 Inmate Telephone Station Port/Identifier;
 - 6.11.6 Inmate Telephone Location Name;
 - 6.11.7 Local Call, Minutes, Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.8 Intralata/Intrastate Call, Minutes, Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.9 Interlata/Intrastate Calls, Minutes, Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.10 Intralata/Interstate Calls, Minutes, Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.11 Interlata/Interstate Calls, Minutes, Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.12 International Calls, Minutes Gross Revenue and Commission (Per Inmate Telephone);
 - 6.11.13 Commission Rate (%);
 - 6.11.14 Total Calls, Minutes, Revenue and Commission Amount (Per Inmate Telephone); and
 - 6.11.15 Traffic Period and Dates.
- 6.12 ITSP shall provide a report of all pre-paid card orders processed during the traffic month for which County is submitting the monthly traffic reports. This summary shall include (at a minimum) order date, invoice number, invoice date, gross amount of the order, commission rate and commission total.
- 6.13 Monthly raw call detail records, billing files and miscellaneous fees/charges reports shall be delivered to County and/or its Designated Agent no later than the 20th day of the month following the month of traffic.
- 6.14 The billing files shall contain all fields which are legally permitted to be released, with the contents of said fields in the exact format and exact content as those files prepared and submitted for billing to the billing

company and ultimately delivered to the called party. The billing files shall be accompanied by a complete file map and complete field legend. The billing files shall include, without limitation, the following fields:

- 6.14.1 Record ID;
- 6.14.2 Facility Name;
- 6.14.3 Facility ID;
- 6.14.4 From ANI;
- 6.14.5 To ANI;
- 6.14.6 Batch Number/ID;
- 6.14.7 Seconds;
- 6.14.8 Revenue Period;
- 6.14.9 Date (yymmdd);
- 6.14.10 Connect Time (hhmmss);
- 6.14.11 Billable Time (mmmmss);
- 6.14.12 Multiple Rate Indicator;
- 6.14.13 Personal Identification Number Digits;
- 6.14.14 Originating City;
- 6.14.15 Originating State;
- 6.14.16 Bill City;
- 6.14.17 Bill State;
- 6.14.18 Rounded Bill Time Indicator;
- 6.14.19 Bill Number;
- 6.14.20 LATA ID;
- 6.14.21 Settlement Code;
- 6.14.22 Message Type;
- 6.14.23 Charge Amount;
- 6.14.24 Additional Fees and Line Surcharges;
- 6.14.25 Specialized Calling Indicator;
- 6.14.26 Validation Indicator;
- 6.14.27 Tax Exempt Indicator;
- 6.14.28 Rate Period; and
- 6.14.29 Rate Class.

- 6.15 The raw Call Detail Records (CDRs) shall contain all calls (both attempted and completed) which originate from the Facilities for each day and each time of the day for the period said raw CDRs are requested. The raw CDRs shall contain the unedited data, including all fields and all field content, which is legally permitted to be released. When requested, the CDRs shall be accompanied with a complete file map and complete file legend. The raw CDRs shall include, without limitation, the following fields:

- 6.15.1 Facility Name;
- 6.15.2 Facility ID;
- 6.15.3 From ANI;
- 6.15.4 To ANI;
- 6.15.5 Batch Number / ID;
- 6.15.6 From City;
- 6.15.7 From State;
- 6.15.8 To City;
- 6.15.9 To State;
- 6.15.10 Station ID;
- 6.15.11 Phone Name or Location;
- 6.15.12 Inmate ID;
- 6.15.13 Personal Identification Number (PIN);
- 6.15.14 Pre-Paid Card ID;

- 6.15.15 Revenue Period;
- 6.15.16 Call Start (yymmdd; mmss);
- 6.15.17 Call End (yymmdd; mmss);
- 6.15.18 Seconds;
- 6.15.19 Call Type (e.g. local, etc.);
- 6.15.20 Bill Type (e.g. free, collect, etc.);
- 6.15.21 Cost;
- 6.15.22 Tax;
- 6.15.23 Validation Result;
- 6.15.24 Termination Reason;
- 6.15.25 LIDB Status; and
- 6.15.26 Completion Indicator.

6.16 ITSP shall provide a monthly miscellaneous charges/fees report on or before the 20th day of the month following the month of traffic which shall be associated with all collect, pre-paid and debit calls. The miscellaneous charges/fees report shall include a breakdown of all fees and charges applied to (without limitation) calls, transactions and accounts from the Facilities defined in this Agreement, including but not limited to: pre-paid collect fee(s), monthly billing fee(s), regulatory cost recovery fee(s), validation fee(s) regardless of whether the fee/charge was assessed directly by ITSP or a third party and shall contain, without limitation, the following information:

- 6.16.1 Facility ID;
- 6.16.2 Date;
- 6.16.3 From ANI;
- 6.16.4 To ANI;
- 6.16.5 Billed ANI;
- 6.16.6 Transaction Type;
- 6.16.7 Bill Type;
- 6.16.8 Fee Type; and
- 6.16.9 Fee Amount.

6.17 The system CDRs shall be stored in a minimum of 3 geographically separate locations to avoid any possibility of CDRs being lost.

6.18 Commission payments, traffic detail reports, billing files, CDRs, miscellaneous charges/fees report, and/or reports not containing the required fields, received by the County after the date specified in **Section 6 – Compensation, Payment and Reporting** are subject to late charges and/or fines.

6.18.1 Late charges and/or fines for commission payments shall be equal to 5% per month of the commission due.

6.18.2 Late charges and/or fines for reporting shall be a fee of \$750.00 per month for each report not received by the 20th day of the month following the traffic month or for each report that does not contain all of the fields and information identified above.

6.18.3 If the commission payment is late, reporting is late and/or reports do not contain all required fields, late charges and/or fines for all three shall apply.

6.19 County may request ITSP to make material changes and/or enhancements to a report identified above. County and ITSP shall work together in good faith to determine a realistic and reasonable schedule for delivery of the requested material changes and/or enhancements. In the event County requires an urgent material change and/or enhancement to a report, ITSP shall use its best efforts to complete the request to ensure County meets its schedule or deadline. Any reasonable report change shall be made by ITSP at no cost to County.

- 6.20 Pursuant to the Federal Communications Commission's (FCC) 2013 Report and Order and Further Notice of Proposed Rulemaking (WC Docket No. 12-375, FCC 13-113), Section III(C) (2)(b) ("Site Commission Payments"), including footnote #203, and 47 CFR §§ 64.6000-64.6060 the County reserves the right to recoup from ITSP certain administrative and operational expenses (Cost Reimbursement Payment) in connection with the provision of interstate and/or intrastate inmate telephone services (or both). Such Cost Reimbursement Payment may take the form of a per-minute rate, flat monthly payment, or other fee structure. The Cost Reimbursement Payment shall be due and payable upon receipt of the invoice by the ITSP. The County may accompany the Cost Reimbursement Payment invoice with a supporting report documenting the administrative and operational expenses incurred by the County in association with ITS covered by the Cost Reimbursement Payment.
- 6.21 The County does not require a Cost Reimbursement Payment upon execution of this Agreement. In the event the County wishes to utilize its option to implement the Cost Reimbursement Payment, then, at the County's request, the County and ITSP shall negotiate in good faith an amendment to this Agreement reasonably acceptable to the County to document the County-imposed Cost Reimbursement Payment. If ITSP and the County are unable to mutually agree on such an Agreement amendment within 30 days of the County's request, then the County may terminate this Agreement at its sole discretion and without penalty or liability, and the County may select another ITS provider.
- 6.22 Should a material change in the rules or policies of any regulatory authority having jurisdiction applicable to ITS occur following the execution of this Agreement, which change affects (a) the ITS rates permitted to be charged by the ITSP to inmates under this Agreement; (b) the right of the County to recover its costs; or (c) the ability for the ITSP to pay site commissions, fees (including but not limited to the Cost Reimbursement Payment) or other ITS cost recovery mechanisms, then, at the County's request, ITSP and the County will negotiate in good faith an amendment to the Agreement reasonably acceptable to the County that enables the County to fully recover its costs in a manner compliant with the change in the FCC's ITS rules or policies. If ITSP and the County are unable to mutually agree on such an Agreement amendment within 30 days of the County's request, then the County may terminate the Agreement at its sole discretion and without penalty or liability to the County and the County may select another ITS provider.

7 PUBLIC PAY TELEPHONE SPECIFICATIONS

- 7.1 ITSP shall furnish, install and maintain a total of 4 public pay telephones for use by the general public. One public pay telephone shall be installed at the Santa Maria Jail in a location determined by the County. The other 3 public pay telephones shall be installed at the Santa Barbara County Jail in locations determined by the County. The public pay telephones shall be furnished, installed and maintained by ITSP at no cost to County. All monthly reporting due to the County for the public pay telephones installed by ITSP shall follow the requirements specified in **Section 6 – Compensation, Payment and Reporting**. The required calling rates for the public pay telephones are specified in **Attachment C - Calling Rates and Commissions**. Gross Revenue shall include all local, Intralata/Intrastate, Intralata/Interstate, Interlata/Intrastate, Interlata/Interstate and international collect, credit card and coin revenue.

8 RATES

- 8.1 Both parties have mutually agreed upon the rates and fees for inmate telephone calls as detailed in **Attachment C – Calling Rates and Commissions**. Calling rates shall be defined as the combined cost of surcharges, any additional fees and per minute rates charged to the called party or inmate. Any and all charges and fees that will be assessed for all collect, debit and pre-paid telephone calls shall be identified in **Attachment C – Calling Rates and Commissions**. Government agency mandated fees such as taxes and state and federal universal service fund assessments are not detailed in this Agreement.

- 8.2 ITSP shall implement any rate adjustments requested by the County within 10 days of said request, subject to regulatory compliance or approval as applicable.
- 8.2.1 ITSP shall submit a written request for the County's approval to increase and/or decrease rates for inmate telephone calls. The County will respond in writing to the ITSP's request.
- 8.2.2 Should ITSP decrease the calling rates without the express written approval of the County, the ITSP shall be responsible for paying commission on the Gross Revenue calculated by applying the calling rates prior to the unapproved change to the rates.
- 8.2.3 Should ITSP increase the calling rates without the express written approval of the County, ITSP shall be responsible for paying commission on the Gross Revenue calculated by applying the increased rates. ITSP shall also use reasonable efforts to issue credits to all end users, within 5 business days, which were overcharged; documentation of the issued credits shall be provided to the County and/or its Designated Agent. If ITSP is unable to issue refunds and/or provide the required documentation, ITSP shall issue a payment to the County as concession. The payment amount shall be in the amount of ITSP's portion of the excess Gross Revenue generated from the overbilled calls. No commission refund shall be due from the County to ITSP for unapproved rate increases.
- 8.3 ITSP shall calculate the raw duration of each inmate telephone call in seconds based on the time the call is accepted and the time the call is terminated by the ITS. For calls where the duration is at least 10 seconds, the duration, in seconds, shall be rounded up to the next whole minute increment and shall be converted from rounded seconds to minutes before the calling rates are applied.
- 8.4 During the call rating process, ITSP shall round the raw calculated call amount to the nearest hundredth decimal place (up or down) using normal accounting practices.

9 RECONCILIATION

- 9.1 From the Effective Date of this Agreement and for a period of 2 years after the termination date of this Agreement, upon 10 business days written notice, County shall have the right to examine and/or fully reconcile any and all of ITSP information (records, data, compensation records) pertaining to any and all services provided under this Agreement.
- 9.2 ITSP shall maintain accurate, complete and reconcilable records, in an electronic format, detailing the Gross Revenues from which commissions can be determined. The records shall include all CDRs, EMI billing files, miscellaneous fee/charges reports, pre-paid card sales and associated invoices, debit purchase or usage reports and associated invoices and commissioning reports during the term of this Agreement.
- 9.3 County reserves the right to delegate such examination and/or reconciliation of records to its Designated Agent or another third party of the County's sole choice.

10 ASSIGNMENT AND MERGERS/ACQUISITION

- 10.1 The services to be performed under this Agreement shall not be assigned, sublet or transferred without 30 days advance written notification to the County and then only upon ITSP's receipt of the County's written consent.
- 10.2 Upon receipt of the County's written consent, any such purchaser, assignee, successor, or delegate shall thereupon assume all rights and responsibilities of ITSP. However, the County may assign any and/or all of its rights and obligations hereunder without ITSP's written consent but upon the County's written notice thereof to ITSP (1) to any affiliate; (2) pursuant to any sale or transfer of all or substantially all of its

business or assets; (3) pursuant to any merger, acquisition or reorganization; or (4) as part of a bona fide pledge to a third party lending institution of collateral of the assignor's rights hereunder.

10.3 If during the Agreement term and any renewal term(s), ITSP merges or is acquired by another entity, the following documents must be submitted to the County:

10.3.1 Corporate resolutions prepared by ITSP and the new entity ratifying acceptance of all of the Agreement and its terms, conditions and processes;

10.3.2 New Federal Identification Number (FEIN) if applicable; and

10.3.3 Other documentation requested by County.

10.4 ITSP expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of a subcontract. ITSP agrees that utilization of a subcontractor to provide any of the products/services in this Agreement shall in no way relieve ITSP of the responsibility for providing the products/services as described and set forth herein.

11 INDEPENDENT CONTRACTOR

11.1 At all times the ITSP shall represent himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself, or his/her employees, to be an employee of the County. Therefore, the ITSP shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the County, its officers, agents, and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

12 MEANINGFUL CONSEQUENCES

12.1 In lieu of terminating this Agreement as may be provided elsewhere in this Agreement, County, at its sole discretion, may, but is not required to, invite ITSP to negotiate in an effort to establish alternative or additional consequences, beyond any specified herein, for failure to fulfill any requirements of this Agreement. Any agreed upon consequence must be significant enough to incent ITSP's future compliance and mitigate satisfactorily for County for any loss of inconvenience occasioned by ITSP's failure. The consequences shall be reasonable, fitting to the breach, and mutually agreed upon prior to being invoked.

13 TERMINATION/DEFAULT

13.1 In the event ITSP fails to perform any terms or conditions of this Agreement, County may consider ITSP in default of the Agreement and supply ITSP written notice of such default. In the event said default is not remedied to the satisfaction and approval of County within 30 calendar days of receipt of such notice, County may terminate this Agreement. Upon termination, ITSP shall adhere to the transition requirements as outlined in **Attachment A, Section 4, Transition**.

13.2 This Agreement between County and ITSP may be terminated by County upon 60 days written notice from County to ITSP without penalty. Upon termination ITSP shall adhere to the transition requirements as outlined in **Attachment A, Section 4, Transition**. County shall not exercise this Section 13.2 within the first year of the Initial Term of this Agreement.

13.3 Unless otherwise directed in the notice of termination all work under this Agreement must be halted immediately.

13.4 Should ITSP for any reason be unable to satisfy the requirements contained in the Agreement, County may, at its sole discretion, call for the Surety Bond due, in part or in full for non-performance, and/or as liquidated damages.

14 INDEMNIFICATION

14.1 ITSP shall defend with counsel reasonably approved by the County, indemnify, and hold County and its affiliates, agents, employees, officers, directors, and successors harmless from and against loss, cost, expenses, damages or liability (including reasonable attorney's fees and court costs) arising from actions, causes of action or claims brought or threatened under this Agreement, for (a) any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by, ITSP or any of its employees, agents or subcontractors in providing the equipment and services hereunder; (b) the operation of ITSP' business or the ITS; (c) any breach by ITSP of its obligations hereunder; or (d) any alleged patent, copyright or trademark infringement or unauthorized use of trade secrets or other proprietary rights in connection with the ITS, except where such claims, demands or liabilities are due to the negligence of County, its agents or employees.

14.2 County agrees to provide ITSP with reasonable and timely notice of any claim, demand, or cause of action made or brought against County arising out of or related to the services rendered by ITSP. ITSP shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion. County will promptly advise ITSP of any proposed agreement to compromise or settle any claim and ITSP will have 10 days to respond to such proposal.

14.3 ITSP shall notify the County immediately in the event of any accident or injury arising out of or in connection with this Agreement.

14.4 In the event any infringement claim is made or threatened against County, or injunctive relief is granted to a claimant, ITSP shall at its sole cost and expense (i) obtain the right for County to continue use of the services; (ii) substitute other services of like capability, or (iii) replace or modify the services to render them non-infringing while retaining like capability. In the event ITSP is unable to perform any of the above, County may terminate this Agreement upon providing 60 days written notice to ITSP and ITSP shall be responsible for all of County's costs and expenses of whatever nature or kind in connection therewith.

14.5 These indemnities and remedies shall survive the expiration or other termination of this Agreement.

15 INSURANCE

15.1 During the period of this Agreement, ITSP, at its own expense, agrees to carry and maintain the following minimum insurance policy of public liability and property damage issued by a casualty company authorized to do business in the State of California, and in a standard form approved by the Board of Insurance Commissioners of the State of California. The insurance company should have a Best Rating of no less than A. Coverage provisions should insure the County and the public from any loss or damage that may arise to any person or property as a result of the services rendered by ITSP.

15.2 ITSP shall provide County with a 30 day advance written notice of cancellation or material changes in said insurance.

15.3 Annual renewals for the term of this policy should be submitted prior to the expiration date of any policy.

15.4 ITSP shall provide County a Certificate of Insurance, on an original ACORD certificate, evidencing required coverage described below, within 10 days after Agreement execution. Said certificate shall show County as an additional insured and shall include a waiver of subrogation.

- 15.5 **Minimum Scope of Insurance.** The coverage shall be at least as broad as:
- 15.5.1 **Commercial General Liability (CGL).** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - 15.5.2 **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if ITSP has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 - 15.5.3 **Workers’ Compensation.** As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 - 15.5.4 **Professional Liability (Errors and Omissions).** Insurance appropriate to the ITSP’s profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
 - 15.5.5 If ITSP maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the ITSP. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the ITSP.
- 15.6 **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
- 15.6.1 **Additional Insured.** The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ITSP including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ITSP’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
 - 15.6.2 **Primary Coverage.** For any claims related to this Agreement, the ITSP’s insurance coverage shall be the primary insurance as respect to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the ITSP’s insurance and shall not contribute with it.
 - 15.6.3 **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
 - 15.6.4 **Waiver of Subrogation Rights.** ITSP hereby grants to the County a waiver of any right to subrogation which any insurer of said ITSP may acquire against the County by virtue of the payment of any loss under such insurance. ITSP agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
 - 15.6.5 **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the ITSP to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
 - 15.6.6 **Acceptability of Insurers.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
 - 15.6.7 **Verification of Coverage.** ITSP shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work

beginning shall not waive the ITSP's obligation to provide them. The ITSP shall furnish evidence of renewal of coverage throughout the term of this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- 15.6.8 **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to terminate this Agreement. Maintenance of required insurance coverage is a material element of this Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by the County as a material breach of contract.
- 15.6.9 **Subcontractors.** ITSP shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ITSP shall ensure that the County is an additional insured on insurance required from subcontractors.
- 15.6.10 **Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:
 - 15.6.10.1 The Retroactive Date must be shown and must be before the date of this Agreement or the beginning of the Agreement work.
 - 15.6.10.2 Insurance must be maintained and evidence of insurance must be provided for at least 10 days after Agreement execution.
 - 15.6.10.3 If coverage is canceled or non-renewed, and not replaced with another claim-made policy form with a Retroactive Date prior to the Agreement effective date, the ITSP must purchase "extended reporting" coverage for a minimum of 5 years after completion of Agreement work.
- 15.6.11 **Special Risks or Circumstances.** The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
 - 15.6.11.1 Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. ITSP agrees to execute any such amendment within 30 days of receipt.
 - 15.6.11.2 Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.
 - 15.6.11.3 The County agrees to provide ITSP with reasonable and timely notice on any claim, demand or cause of action made by or brought against the County arising out of the service provided by ITSP. ITSP shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion.
- 15.6.12 For any person or ITSP with who ITSP enters into a contract to provide the services defined in this Agreement, ITSP must:
 - 15.6.12.1 Provide a certificate of coverage, for all persons providing the services defined in this Agreement and prior to those persons beginning work on any project, showing coverage is being provided for the duration of this Agreement. Coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of California Labor Code.
 - 15.6.12.2 Provide a new certificate, prior to the end of the coverage period, of coverage showing extension of coverage if the coverage period shown on ITSP's current certificate of coverage ends during the duration of the project.

- 15.6.12.3 Retain all required certificates of coverage for the duration of the project and for 2 years thereafter.
- 15.6.12.4 Notify the County in writing within 10 days after ITSP knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

15.6.13 Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by ITSP and the County and to ensure that the County is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontractor in those matters described in this Agreement.

16 DISCREPANCY

- 16.1 In the event of a contract discrepancy, resolution shall be achieved in the following order, with the higher ranking documents taking place over the lower (shown higher to lower below):
- This contract and any amendments;
 - RFP #FY2015, Amendments 1 and 2, and the BAFO; and
 - ITSP's final response.

17 SUBCONTRACTS

- 17.1 Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by ITSP and the County and to ensure that the County is indemnified, saved and held harmless from and against any and all claims of damage, loss and cost (including attorney fees) of any kind related to a subcontractor in those matters described in this Agreement.
- 17.2 ITSP expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of a subcontract. ITSP agrees that utilization of a subcontractor to provide any of the products/services in this Agreement shall in no way relieve ITSP of the responsibility for providing the products/services as described and set forth herein. ITSP shall identify any subcontractors used to provide services under this Agreement.

18 FORCE MAJEURE

- 18.1 Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorists acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

19 NOTICE

Any notice required by this Agreement shall be supplied in writing in electronic format and/or delivered in person or by registered or certified mail addressed to the party's address listed below. Notice shall be presumed to have been received 5 business days after it is deposited in a U.S. Postal Service.

Santa Barbara County Sheriff's Office

ATTN: Lieutenant Timothy McWilliams
Address: 4434 Calle Real
Santa Barbara, California
93110

Inmate Calling Solutions, LLC

d/b/a ICSolutions
ATTN: Brendan Philbin
Address: 2200 Danbury Street
San Antonio, TX
78217

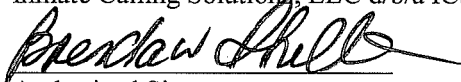
20 MISCELLANEOUS TERMS

- 20.1 **Interpretation:** This Agreement shall be interpreted under, and governed by, the Laws of the State of California. The parties hereto agree that any action relating to this Agreement shall be instituted in the Superior Court in Santa Barbara County, California.
- 20.2 **Severability:** If any part of this Agreement is contrary to any Federal, State or Local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision or applications. To that end, the provisions of this Agreement are declared to be severable. If any provision hereof is held invalid by a Court of competent jurisdiction that provision shall be automatically deleted and all remaining provisions shall remain in full force and effect.
- 20.3 **Entirety, Waiver, and Modification:** This Agreement, together with any Attachments, represents the entire understanding between County and ITSP (collectively Parties) with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. Only a written instrument executed by the Party waiving compliance may waive or modify the terms of this Agreement. The failure of either Party at any time to require performance of any provision hereof shall in no manner affect the right at a later date to enforce the same. No waiver by either Party of any term of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be a further or continuing waiver of such term or of any other term of this Agreement.
- 20.4 **Confidentiality:**
- 20.4.1 To the extent permitted by law, the Parties hereto shall keep confidential any and all information which either Party states to be confidential or proprietary and so advises the other Party or labels the information as such (Confidential Information). Such information shall remain the property of the Party owning such information and, when in tangible form shall be returned to the respective party or otherwise disposed of as directed by the appropriate Party. Any violation of this provision by either Party shall be actionable. However, notwithstanding the foregoing, neither Party shall be under any obligation to maintain in confidence any portion of the information it has received which (i) is now, or which becomes hereafter through no act or failure to act on the part of the receiving Party, generally known or available to the public; (ii) is already known by the receiving Party at the time of the disclosure of such information and was not under any obligations of confidence; (iii) is hereafter furnished to the receiving Party by a source other than the owner, provided such source is not known by the receiving Party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation; (iv) has been independently developed by the receiving Party without benefit of the confidential or proprietary information of the other; or, (v) is required to be disclosed by any applicable law or regulation or by order of any governing body or court of competent jurisdiction; provided however, that the Party being required to disclose the confidential or proprietary information of the other must promptly notify the owner of same of the demand for such disclosure and such disclosure to a government entity pursuant to law, order or regulation shall not provide a basis for any additional disclosure of such information by either Party.

20.4.2 Each Party including its agents and representatives shall: (i) follow reasonable procedures to protect and maintain the confidentiality of the Confidential Information; (ii) not disclose, or allow to be disclosed, the Confidential Information to any party other than to its employees, contractors, officers, or directors who have a need to know in order to perform the services contemplated under this Agreement, and are under the same binding obligation of confidentiality provided herein with respect to any such information; (iii) not use the Confidential Information for any purpose other than to perform under this Agreement; and, (iv) treat all Confidential Information of the other Party with the same degree of care to avoid disclosure to third parties as it uses with respect to the recipient Party's own Confidential Information, but not less than a reasonable degree of care.

In Witness Whereof, the Parties have set their hands as on the day and year written below, acting through their authorized representatives.

Inmate Calling Solutions, LLC d/b/a ICSolutions



Authorized Signature

Brendan Philbin

Typed or Printed Name

VP Business Development

Title

1/7/16

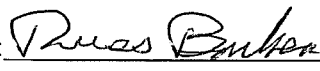
Date

COUNTY OF SANTA BARBARA

By 
Peter Adam, Chair
Board of Supervisors

Date: 2-2-2016

CLERK OF THE BOARD
ATTEST:

By: 
MONA Miyasato
Clerk of Board of Supervisors

APPROVED AS TO FORM:
COUNTY COUNSEL

By: 

Kevin E. Ready, Sr.
Senior Deputy County Counsel

APPROVED AS TO FORM:
AUDITOR-CONTROLLER

By: 

APPROVED AS TO FORM:
RISK MANAGEMENT

By: 

SHERIFF-CORONER

By: 

Bill Brown, Sheriff-Coroner
Santa Barbara County