

**MACON COUNTY BOARD RESOLUTION
APPROVING INMATE TELEPHONE SERVICES AGREEMENT**

RESOLUTION NO.

WHEREAS, This Inmate Telephone Services Agreement (the "Agreement") is made by and between Consolidated Communications Enterprise Services, Inc. ("CCES") dba Consolidated Communications Public Services, Inc. ("CCPS"), a Delaware corporation and Macon County Jail ("Facility") located at 333 South Franklin Street, Decatur, Illinois 62523.

WHEREAS, CCPS desires to provide Customer with local, Intralata, Interlata and Interstate inmate telephone service at Macon County Jail;and

WHEREAS, Customer desires CCPS to provide such service.

WHEREAS, CCPS agrees to increase commission payments of 5% for debit cards in addition to the Regular Commission payments, Consolidated will provide the Macon County Sheriff's Department with a signing bonus of \$30,000.00.

WHEREAS, Consolidated will provide the Macon County Sheriff's Department with a \$20,000 equipment fund for the purpose of buying weapons and equipment to assist with the public safety of the department.

WHEREAS , the Justice Committee met on August 22, 2013 and the Finance Committee met on September 3, 2013 and

NOW, THEREFORE, BE IT RESOLVED by the Macon County Board that it hereby approves the attached agreement between Macon County Jail and Consolidated Public Services, Inc. that will remain in effect until agreement is terminated.

BE IT FUTHER RESOLVED that this resolution shall become effective upon the adoption thereof.

PRESENTED, PASSED, APPROVED this September 12, 2013.

AYES _____ NAYS _____

MACON COUNTY BOARD
MACON COUNTY, ILLINOIS

ATTEST:

BY:

Stephen M. Bean, Clerk for the
County Of Macon, State of Illinois

Jay Dunn, Chairman of the Macon County
Board

INMATE TELEPHONE SERVICES AGREEMENT

This Inmate Telephone Services Agreement (the "Agreement") is made and entered into as the 19th day of July 2013, (the effective date), by and between **Consolidated Communications Enterprise Services, Inc. ("CCES") dba Consolidated Communications Public Services, Inc. ("CCPS")**, a Delaware corporation and **Macon County Jail ("Facility")** located at 333 S Franklin Street, Decatur, Illinois 62523.

RECITALS

WHEREAS, CCPS desires to provide Customer with local, Intralata, Interlata and Interstate inmate telephone service at Macon County Jail; and

WHEREAS, Customer desires CCPS to provide such service.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions, the parties hereto agree as follows:

1. **Inmate Phone Service; Management.** Upon the terms and subject to the conditions contained in this Agreement, CCPS agrees to provide the Facility with inmate collect and debit call telephones (the "Inmate Phones") and all equipment related to the processing, monitoring, and recording of these calls in accordance with applicable laws, rules and/or tariffs of CCPS. CCPS agrees to install, maintain, repair and remove the Inmate Phones. CCPS shall have the exclusive right to control and manage all aspects of the Inmate Phones and other related equipment, including, without limitation, the selection, installation, operation, repairing, servicing and removal thereof and to determine the network arrangements for all call traffic generated through the use of the Inmate Phones (provided that Customer may require CCPS to take steps that CCPS determines are reasonable and economically practicable to remedy any substantial deterioration in the service quality). Notwithstanding the foregoing, Customer shall have the right to select the location where the Inmate Phones will be installed at the Facility and to control access by inmates to the Inmate Phones.

2. **Electric Power; Wiring.** Customer, at its expense, shall provide all necessary electric power, back-up generation service, outside cable plant and conduit to be used in connection with the Inmate Phones provided by CCPS under this Agreement.

3. **Request for Service.** Upon the mutual written agreement of CCPS and Customer, additional facilities may be added.

4. **Right of Entry.** Employees and representatives of CCPS shall have the right of ingress and egress to the Facility, subject to the requirements of Customer, at all reasonable hours for the purpose of installing, inspecting, repairing, replacing or removing Inmate Phones, related equipment and personal computers.

5. **Commission Payment.**

a. CCPS agrees to pay Customer a commission based on gross revenues throughout the duration of this contract as described in Section 7 below and continue until both respective parties reach a new agreement. CCPS commission payments are made payable at the end of the month succeeding such month. CCPS' commission payment will be based on the gross revenue generated from Local, Intralata, Interlata and Interstate traffic for that particular month including collect and debit cards. Gross revenue will be defined as (revenue on all local and long distance calls originating from inmate non-coin phones including calls for which payment cannot be collected from customers)

Commission Per Month Collect	Commission Per Month Debit
58.5%	56%

b. In the event the initial term of this Agreement or any renewal or extension thereof is not renewed or extended and CCPS continues to provide the Facility with Inmate Phones, CCPS agrees to pay Customer a commission based on the rates and such terms as mutually determined in writing by CCPS and Customer.

c. In addition to the commission payments, Consolidated will provide the Macon County Sheriff's Department with a signing bonus of \$30,000.

d. In addition to the commission payments and above \$30,000 signing bonus, CPS will provide the Macon County Sheriff's Department with a \$20,000 equipment fund for the purpose of buying weapons and equipment necessary for public safety purposes.

e. In addition, Consolidated will provide the Macon County Sheriff's Department with 1,000 Trustee cards per year. These cards will be used at the discretion of Macon County and additional cards will have to be purchased by Macon County for this purpose. There will be no revenue generated by Macon County for these cards therefore no commission will be earned.

6. **Exclusive Authority.** CCPS shall have the exclusive right and authority to provide Inmate Phones for the Facility on the date hereof.

7. **Term of Agreement; Termination.**

a. This Agreement shall be effective on 08/01/13 between **Macon County Jail and Consolidated Communications Public Services, Inc.** and will remain in effect with respect to the Facility for a period of 3 years, through 07/31/16 ("Initial Term"). The initial Term is automatically renewable for additional three (3) year term unless either party gives thirty (30) days written notice prior to the expiration of the Initial Term or any succeeding three (3) year term.

b. Either party may terminate this Agreement or any portion of the Inmate Phone service provided hereunder without liability upon reasonable prior written notice if litigation or proceedings are instituted challenging or arising out of the provision or operation of the Inmate Phones by any third party, which based on the reasonable judgment of its respective counsel presents a substantial risk of material liability to such party, or any federal, state or local law, regulation, ruling or order is adopted or issued,

including, without limitation, any ruling or order of the Federal Communications Commission or a state regulatory agency, which bars or substantially limits the provision or operation of the Inmate Phones or substantially changes a material term of this Agreement. CCPS may terminate this Agreement without liability upon reasonable prior written notice if CCPS' tariffs with respect to the Inmate Phones are modified or altered by order of any regulatory agency so as to render continuation of this Agreement or the provision or operation of Inmate Phones at any Facility inadvisable, commercially impracticable or unprofitable.

8. **Protection of CCPS Property; Replacement of Inmate Phones.**

Customer shall take reasonable precautions to protect CCPS' Inmate Phones against vandalism, theft or hazardous conditions, and shall report any such act to CCPS. CCPS agrees to repair or replace any Inmate Phones lost or damaged by such act. Customer shall prohibit any person (other than employees of CCPS) from disconnecting, moving or altering any of the Inmate Phones and related equipment without the written consent of CCPS.

9. **Restrictions of Use.** Customer shall not use the Inmate Phones in the conduct of its business or use the telephone numbers assigned thereto in its advertising or other publications. Customer shall ensure that no equipment or apparatus, other than equipment furnished or approved (but only so long as such equipment causes no harm to CCPS' equipment or the networks used by CCPS) by CCPS shall be attached to the Inmate Phones and related equipment or be used in connection therewith.

10. **Authority.** Customer represents and warrants that Customer owns, leases, controls or has the right to possess the premises upon which CCPS has installed or shall install its Inmate Phones and that Customer is duly authorized to grant CCPS the right and authority to install and maintain its Inmate Phones and related equipment at the Facility.

11. **Ownership of Equipment; Right of Entry.** Customer acknowledges that the Inmate Phones, network carrier equipment and related call processor equipment installed by CCPS at the Facility is solely the property of CCPS and that Customer has no claim of ownership thereto. Upon the termination of this Agreement or the Inmate Phone service with respect to any Facility, all related Inmate Phones, network carrier equipment and related call processor equipment shall be returned to CCPS. Customer hereby grants CCPS the right to enter any Facility to remove its Inmate Phones, network carrier equipment and related call processor equipment at the termination of this Agreement or the Inmate Phone service with respect to any Facility after giving reasonable notice to, or upon the request of, Customer. CCPS shall not be required to repair holes or other damage to the Facility resulting from the workmanlike removal of the Inmate Phones, network carrier equipment and related call processor equipment hereunder.

12. **Exclusive Remedies.** The parties agree that the remedies of Customer for any breach or partial breach of this Agreement by CCPS (other than a failure to repair an Inmate Phone shall be limited to any accrued but unpaid commissions owed Customer under this Agreement. In the event of a failure by CCPS to repair an Inmate Phone so that it is providing the basic function for which it is intended, the remedy of Customer shall be limited to the repair or replacement of such Inmate Phone. In the event CCPS materially breaches this Agreement and such breach continues uncured for a period of 30 days after written notice of such breach from Customer to CCPS, Customer shall have the right to cancel the Facility where that material breach occurred. IN NO EVENT SHALL CCPS BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR RELIANCE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST COMMISSIONS OR PROFITS OR OTHER ECONOMIC LOSS, EVEN IF THE EXCLUSIVE REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE.

13. **Limitation of Service.** The Inmate Phone service and any equipment provided by CCPS shall be used by Customer only for lawful purposes and in a lawful manner. CCPS assumes no liability for the actual or intended use of its services or

equipment under this Agreement and, to the extent permitted by law, Customer shall indemnify and save CCPS harmless from and against all loss, damage, claim or expense asserted against CCPS by any third party, except to the extent arising out of the negligence or willful misconduct of CCPS, its agents or employees.

14. **Force Majeure.** If CCPS' performance of this Agreement, or any obligation hereunder is prevented, restricted or interfered with by causes beyond its reasonable control, including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any department (including state and local governments or of any government agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments) or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, then CCPS shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference and Customer shall likewise be excused from performance of its obligations on a day-to-day basis to the extent Customer's obligations relate to the performance so prevented, restricted, or interfered with. CCPS shall use its best efforts to avoid or remove such causes of nonperformance and both parties shall proceed to perform with dispatch whenever such causes are removed or cease.

15. **Waiver.** The failure of either party to insist upon strict performance of any covenants, terms, conditions or obligations of this Agreement shall not be construed as waiver or relinquishment for the future of any such covenants, terms, conditions or obligations, but the same shall be and remain in full force and effect.

16. **Assignment.** No party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, CCPS may assign this Agreement without Customer's prior consent (a) as security for financing or in connection with the enforcement of the security so granted; or (b) to a successor in interest to its business by merger, sale of assets, operation of law, purchase, consolidation

or reorganization provided that the assignee in each case agrees to be bound by the terms of this Agreement. Nothing in this paragraph shall prohibit CCPS from delegating its duties or from assigning this Agreement to its parent, an affiliate or subsidiary, without the other party's prior consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

17. **Notice.** Any notice required or permitted to be given by either party to the other shall be in writing and shall be delivered by hand, or by certified or registered mail to the address stated below (or such other address as may from time to time be designated in writing). Any such notice shall be deemed to have been given (a) if by hand, upon receipt, and (b) if by mail three days after deposit in the United States mail with postage prepaid to the respective parties as follows:

To CCPS: **Consolidated Communications Public Services**
 121 South 17th Street
 Mattoon, IL 61938
 Attn: Kelly Cole
 217-258-2926

To Customer: **Macon County Jail**
 333 S Franklin Street
 Decatur, Illinois 62523
 Attn: Sheriff Tom Schneider
 217-424-1321

18. **Amendment.**

a. The terms and conditions of this Agreement shall not be amended or modified other than in a writing signed by both parties except as provided in Section 18(b) of this Agreement. No oral statement shall in any manner or degree, modify or otherwise affect the terms and conditions of this Agreement.

b. This Agreement shall at all times be subject to such changes or modifications as the appropriate state and federal regulatory agencies may from time to time direct and approve in the exercise of their jurisdiction. In the event any provision of this Agreement is in conflict with any Federal or State law or regulation, such provision shall be deemed modified to conform with such law or regulation and all other provisions of this Agreement shall continue in full force and effect.

19. **Severability.** In the event that any term or provision of this Agreement is determined to be unenforceable, such provision shall be deemed inoperative and the remainder of this Agreement shall continue in full force and effect.

20. **Governing Law.** The construction, interpretation and performance of this Agreement shall be governed by the laws of the State of Illinois.

21. **Captions.** The captions in this Agreement are for convenience only and shall not be construed to define or limit any terms herein.

22. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof.

23. **Regulatory Approvals.** Performance of this Agreement is subject to any regulatory approvals, which in CCPS' sole judgment are required in the State of Illinois or other jurisdictions in connection with the provision of the Inmate Phones and services hereunder. Customer agrees to use the Inmate Phones and equipment furnished hereunder in accordance with applicable, law, rules and/or tariffs of CCPS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or officials as of the day and year first above written.

**CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC. dba
CONSOLIDATED COMMUNICATIONS PUBLIC SERVICES, INC.**

By: *Kelly J. Cole*

Printed Name: Kelly Cole

Title: General Manger

MACON COUNTY JAIL

By: *Tom Schneider*

Printed Name: Tom Schneider

Title: Sheriff