

**State of Montana Public Payphone and Inmate Phone System Equipment
and Services Contract #02-515B**

1.	PARTIES	2
2.	EFFECTIVE DATE, DURATION, AND RENEWAL	2
3.	SERVICES AND/OR SUPPLIES	2
4.	CONSIDERATION/PAYMENT	2
5.	ACCESS AND RETENTION OF RECORDS	3
6.	ASSIGNMENT, TRANSFER AND SUBCONTRACTING.....	3
7.	FAVORABLE PRICES.....	3
8.	TAX EXEMPTION.....	3
9.	INDEMNIFICATION	3
10.	INSURANCE	3
11.	COMPLIANCE WITH WORKERS' COMPENSATION ACT	4
12.	COMPLIANCE WITH LAWS	4
13.	CONTRACT ENFORCEMENT	4
14.	CONTRACT TERMINATION.....	5
15.	CONTRACTOR PERFORMANCE ASSESSMENTS.....	5
16.	LIAISON AND SERVICE OF NOTICES.....	5
17.	PROJECT MANAGEMENT AND IMPLEMENTATION.....	5
18.	MEETINGS	6
19.	CHOICE OF LAW AND VENUE.....	6
20.	SCOPE, AMENDMENT AND INTERPRETATION.....	6
21.	EXECUTION	7

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, Information Technology Services Division, (hereinafter referred to as “the State”), whose address and phone number are 125 North Roberts, Helena, Montana 59620-0113 and 406-444-2700 and Qwest Corporation, (hereinafter referred to as the “Contractor”), whose nine digit Federal ID Number, address and phone number are 84-1305748, 2701 East 80th Street, Bloomington, MN 55425 and 952-883-8127.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

(a) This contract 02-515B shall take effect on June 18, 2002. The contract shall terminate on June 30, 2005, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed (7) additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a 10-year period.

3. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State, payphone services and/or equipment at State owned or leased properties as proposed in within RFP #02-515B. Services proposed, and therefore provided are the following:

- InterLATA/Interstate Toll Service, for payphones at State owned or leased properties as detailed in RFP #02-515B, and
- IntraLATA toll, local services, and payphone equipment for the payphones at State owned or leased properties as detailed in RFP #02-515B, including Montana correctional facilities.

4. CONSIDERATION/PAYMENT

(a) In consideration for the InterLATA/Interstate Toll Service, and IntraLATA toll, local services, and payphone/inmate equipment to be provided, the Contractor shall pay according to the schedule detailed in the Contractor’s proposal, Section 10 of RFP #02-515B.

InterLATA/Interstate Toll
 Payphones 23 %
 Inmate Phones 50 %

IntraLATA Toll
 Payphones 23 %
 Payphones Local 23%
 Inmate Phones 40 %

5. ACCESS AND RETENTION OF RECORDS

(a) The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance at contractor's corporate headquarters during normal business hours with reasonable notice. (Mont. Code Ann. § 18-1-118.)

(b) The Contractor agrees to create and retain records supporting the InterLATA/Interstate Toll Service, and IntraLATA toll, local services, and payphone equipment for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State, which consent may not be unduly or unreasonably withheld. (Mont. Code Ann. § 18-4-141.)

7. FAVORABLE PRICES

The Offeror agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any commission increases at least equal to any commission increases made available to any other customer of comparable volume.

8. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

9. INDEMNIFICATION

Indemnification. It is agreed by and between the parties that it is the responsibility of State to maintain the area around the inmate telephones and to maintain enclosures if provided by State. State specifically agrees to defend and indemnify Contractor from any claims that may result from State's failure to properly maintain the area or enclosure except to the extent that such failure is due to the sole negligence or willful acts of Contractor's employees or agents. Contractor agrees to defend and indemnify State from any claims that result from Contractor's failure to properly maintain or service inmate telephones, except to the extent that the claim results from the sole negligence or willful acts of State's employees or agents.

10. INSURANCE

General Requirements: The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by Contractor's negligent act or omission. Contractor need not maintain coverage for their subcontractors, but must require subcontractors to maintain their own coverage.

Primary Insurance: The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Specific Requirements for Commercial General Liability: The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of 1,000,000 per occurrence and 2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

12. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

13. CONTRACT ENFORCEMENT

The contractor is notified that pursuant to 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the

Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy of standard.

14. CONTRACT TERMINATION

(a) The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

15. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the contractor's performance. This contract may be cancelled for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The Information Technology Services Division (ITSD) will make any final decision to cancel this contract based on the assessment and any related information, the contractor's response and the severity of any negative performance assessment. The contractor will be notified in writing with a justification of contract cancellation.

16. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Gordy Conn will be the liaison for the State.

PO Box 200113

Room 223 Mitchell Building

Helena, MT 59620-0113

Phone: 406-444-3170

Fax: 406-444-2701

gconn@state.mt.us

Linda Griffith will be the liaison for the Contractor.

2701 E 80th Street

Bloomington, MN 55425

Phone: 952-883-8127

Fax: 952-853-0442

ldgrif2@qwest.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

17. PROJECT MANAGEMENT AND IMPLEMENTATION

All project management and coordination on behalf of ITSD shall be through a single point of contact designated as the ITSD Project Manager. Contractor shall designate a Contractor Project Manager

who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the ITSD Project Manager and the Contractor Project Manager.

Gordy Conn will be the ITSD Project Manager.
Jim McMillen will be the Contractor Project Manager.

ITSD Project Manager/Contractor Project Manager may not be changed without the written consent of the other Party, which consent may not be unduly or unreasonably withheld.

18. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

19. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

20. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 7 numbered pages, any Attachments as required, RFP #02-515B as amended and the Contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

21. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below:

MONTANA DEPARTMENT OF
ADMINISTRATION

Qwest Corporation
2701 East 80th Street
Bloomington, MN 55425
FEDERAL ID #84-1305748

BY: _____
Brian Wolf, CIO
Information Technology Services Division

BY: _____
Name
Title

DATE: _____

DATE: _____

Approved as to legal content:

Legal Counsel (Date)
Department of Administration