

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AGREEMENT BETWEEN MONTGOMERY TECHNOLOGY INC. AND  
THE FORT BEND COUNTY SHERIFF  
FOR VIDEO VISITATION SERVICES**

THIS AGREEMENT is made and entered into by and between the duly elected Fort Bend County Sheriff, (hereinafter "Sheriff"), and Montgomery Technology Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, the Sheriff may expend commissary proceeds under section 351.0415 of the Local Government Code without the requirements of the County Purchasing Act, chapter 262, subchapter C of the Local Government Code;

WHEREAS, the Sheriff desires that Contractor provide video visitation equipment and services which will assist the Sheriff in protecting the well-being, health, safety, and security of the inmates and the facility;

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Term**

This Agreement shall be in effect upon signature of Sheriff and shall terminate on September 30, 2015.

**Section 2. Scope of Services**

- A. Contractor shall provide a web based video visitation system which shall permit inmates of the Fort Bend County Jail to video conference remotely with individuals outside of the correctional setting.
- B. Contractor shall ensure that a minimum of four (4) remote visitations may occur simultaneously. More specifically, Contractor shall install, setup, and provide technical support for the equipment identified in Exhibit A to this Agreement, at the Fort Bend County Jail located at 1410 Williams Way Blvd., Richmond, TX 77469.

- C. All video visitations shall be recorded and provided to the Sheriff on demand.
- D. Contractor shall provide technical support for the service to include software updates free of charge as new features or improvements are released.
- E. Contractor shall provide all management services necessary to implement this Agreement; the establishment (if and to the extent required by the Contractor) and compliance with all tariffs and all rules, regulations, orders and policies of federal and state regulatory authorities applicable to the offsite visitation services provided by the Contractor; the establishment and maintenance of all billing and payment arrangements; the performance (alone or through others) of all validation, billing, out clearing and collection services and the handling of all billing and other inquiries, fraud control, and all other services essential to the performance of the Contractor's obligations under this Agreement. Contractor reserves the right to control unbillables, bad debt and fraud.

### **Section 3. Personnel**

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of the Sheriff, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of the Sheriff, is incompetent or by his conduct becomes detrimental to the project shall, upon request of the Sheriff, immediately be removed from association with the project.

### **Section 4. Compensation and Payment**

- A. Contractor's fees for the equipment and labor shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the equipment and labor in Exhibit A is Thirty Six Thousand, Nine Hundred and Fifty-Six Dollars and 24/100 (\$36,956.24). In no case shall the amount paid by the Sheriff for the equipment and labor in Exhibit A under this Agreement exceed the Maximum Compensation without an approved change order.
- B. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by the Sheriff.
- C. The Sheriff will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to the Sheriff two

- (2) original copies of invoices showing the amounts due for services performed in a form acceptable to the Sheriff. The Sheriff shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. The Sheriff shall pay each such approved invoice within thirty (30) calendar days. The Sheriff reserves the right to withhold payment pending verification of satisfactory work performed.
- D. Contractor shall retain twenty percent (20%) of the gross revenue billed or prepaid for all visitations covered by the Agreement. Gross revenue shall mean all revenue generated by every completed visit that is accepted by an end user and billed by the Company. Gross revenue on which monthly commission will be paid does not include: (i) taxes and tax related surcharges; (ii) credits; (iii) billing recovery fees; and (iv) any amount company collects for, or pays to, third parties, including, but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi- governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by company in connection with such programs.
- E. Contractor shall remit the remaining eighty percent (80%) for a calendar month to the Sheriff on or before the 30th day of the following calendar month in which the paid remote Video Visitation sessions were held. All payments shall be considered final and binding upon the Sheriff unless written objection is received by Contractor in accordance with Section 14 within sixty (60) days of receipt of commission payment by the Sheriff.
- F. Contractor shall provide both summary and detail reports on the use of video visitation services. The original reports and payment will be mailed or emailed directly to the Sheriff or his designee. The following information will be provided for each location by account:
1. Total Visits (itemized by type to include but is not limited to Personal visits and Professional visits.)
  2. Total minutes of use (itemized by type to include but are not limited to Personal visits and Professional visits.)
  3. Total usage revenue (itemized by type to include but is not limited to Personal visits and Professional visits.)
  4. Reports shall be available for all information collected and tracked by the software.
  5. All reports shall be accessible and downloadable by the Sheriff's designee at all times.

#### **Section 5. Limit of Appropriation**

- A. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that the Sheriff shall have available the total maximum sum of Thirty Six Thousand, Nine Hundred and Fifty-Six Dollars and 24/100

(\$36,956.24) specifically allocated to fully discharge any and all liabilities the Sheriff may incur for the equipment and labor in Exhibit A.

- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that the Sheriff may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed Thirty Six Thousand, Nine Hundred and Fifty-Six Dollars and 24/100 (\$36,956.24) for the equipment and labor in Exhibit A.

#### **Section 6. Modifications and Waivers**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

#### **Section 7. Termination**

- A. Termination for Convenience: the Sheriff may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
  - 1. The Sheriff may terminate the whole or any part of this Agreement for cause in the following circumstances:
    - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the Sheriff in writing;
    - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to the Sheriff's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from the Sheriff specifying such breach or failure.

2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Sheriff in accordance with Section 7 (A) above.
- C. Upon termination of this Agreement, the Sheriff shall compensate Contractor in accordance with Section 4, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to The Sheriff. Contractor's final invoice for said services will be presented to and paid by The Sheriff in the same manner set forth in Section 4 above.
- D. If the Sheriff terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of the Sheriff upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 4 for work performed. Contractor shall promptly furnish all such data and material to the Sheriff on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit the Sheriff, or any duly authorized agent of the Sheriff, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. The Sheriff's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

- A. Prior to commencement of the Services, Contractor shall furnish the Sheriff with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to the Sheriff. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by the Sheriff. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
  2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
  3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
  4. Professional Liability insurance with limits not less than \$1,000,000.
- B. The Sheriff and Fort Bend County shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of the Sheriff and Fort Bend County.
- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND THE SHERIFF AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the Sheriff. Any and all information of any form obtained by Contractor or its employees or agents from the Sheriff in the performance of this Agreement shall be deemed to be confidential information of the Sheriff

("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the Sheriff hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist the Sheriff in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise the Sheriff immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with the Sheriff in seeking injunctive or other equitable relief in the name of the Sheriff or Contractor against any such person. Contractor agrees that, except as directed by the Sheriff, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at the Sheriff's request, Contractor will promptly turn over to the Sheriff all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the Sheriff that is inadequately compensable in damages. Accordingly, the Sheriff may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of the Sheriff and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

- E. Contractor expressly acknowledges that the Sheriff is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, the Sheriff will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to the Sheriff by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

**Section 13. Independent Contractor**

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of the Sheriff and shall not be entitled to any of the privileges or benefits of the Sheriff employment.

**Section 14. Obligations of the Sheriff**

- C. Sheriff shall reasonably protect the Equipment against willful abuse and promptly report any damage, service failure or hazardous conditions to the Contractor.
- D. Sheriff shall provide, at his expense, provide suitable space, accessible to the users and adequate power source to run the equipment.
- E. Sheriff shall permit reasonable access to its respective facilities without charge or prejudice to Contractor's employees or representatives. Contractor must comply with current Premise Provider policy regarding access to facilities.
- F. Sheriff represents and warrants that he has legal authority to enter into this agreement and to make all decisions concerning the providing of space and the installation and use of the equipment at the facility.
- G. Sheriff agrees that Contractor had no responsibility to advise Sheriff with respect to any applicable law, regulation, or guideline that may govern or control visitation recordation or monitoring by Contractor or compliance therewith. Contractor disclaims any



responsibility to provide, and in fact has not provided, Premise Provider any legal advice concerning such applicable law, regulation, or guidance, or compliance therewith.

- H. Sheriff agrees that all visitation recordings contained in the video visitation system equipment provided by Contractor to Sheriff are the exclusive property of the Sheriff.

**Section 15. Notices**

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

The Sheriff: Fort Bend County Sheriff's Office  
ATTN: Sheriff  
1410 Williams Way Blvd.  
Richmond, TX 77469

Contractor: Montgomery Technology, Inc.  
Attn: Nathan Skipper  
23 Old Stage Road  
Greenville, Alabama 36037

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 14 (A) and 14 (B) and if the addressee has received the Notice. A Notice is deemed received as follows:
1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
  2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 16. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals

in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by the Sheriff, Contractor shall furnish the Sheriff with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 17. Performance Warranty**

- A. Contractor warrants to the Sheriff that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor warrants to the Sheriff that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Section 18. Assignment and Delegation**

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 19. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Sheriff's sovereign immunity.

**Section 20. Successors and Assigns**

The Sheriff and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 21. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 22. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 23. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of the Sheriff. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of the Sheriff, except where required to do so by law.

**Section 24. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 25. Conflict**

It is understood and agreed to by the parties that the entire Agreement of the parties is contained herein and that this Agreement supersedes all prior communications and negotiations among the parties, oral or written, relating to the subject matter hereof as well as any previous Agreements presently in effect between the parties relating to the subject matter hereof.

***Remainder left blank***

***Execution page follows***

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 31<sup>st</sup> day of July, 2014.

FORT BEND COUNTY SHERIFF

Troy E. Nehls  
Troy E. Nehls  
Fort Bend County Sheriff

MONTGOMERY TECHNOLOGY INC.

Nathan Skipper  
Authorized Agent- Signature

Nathan Skipper  
Authorized Agent- Printed Name

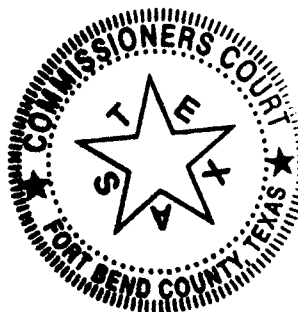
VP of Sales  
Title

7/31/2014  
Date

Exhibit A: Equipment and Labor Invoice

Recorded by Commissioners Court on:

8-26-14  
Date  
Dianne Wilson  
Dianne Wilson  
Fort Bend County Clerk



I/MTR/Agreements/LawEnf/Sheriff 04.28.14 7.29.2014

# EXHIBIT A

## Equipment and Labor

Montgomery Technology Systems  
23 Old Stage Road  
Greenville, AL 36037

## Estimate

Date	Estimate #
5/19/2014	3687

Name / Address
Fort Bend County Jail 301 Jackson St Richmond, TX 77469

Phone #	Fax #
334-382-7441	334-382-9793

Item	Description	Qty	Rate	Total
LABOR RATE I	Labor for Service trip @ \$105 per hour-4 hour minimum	20	105.00	2,100.00
Expenses (Labor ...	Expenses	20	8.3333	166.67
C9V76A8-NI	HP E221 - LED monitor - 21.5"	4	234.00	936.00T
G3B32US-NI	HP EliteDesk 800 G1 SFF,8GB DDR3-1600 DIMM (2x4GB) Ram 128GB SATA 2.5 SSD	3	1,210.30	3,630.90T
Software-NI	NET MEDIA	3	1,800.00	5,400.00T
RV016-NI	Cisco RV016 16-port 10/100 VPN Router-Multi Wan	1	668.19	668.19T
363973-NI	HP Display Port Adapter P/N FH973AT	2	30.525	61.05T
661189-B21-NI	Hp ProLiant DL360e Gen8 Server with 3 500GB Hard Drive	4	4,118.4125	16,473.65T
Software-NI	MTI APPS	4	1,800.00	7,200.00T
Software-NI	NetMedia Client	1	250.00	250.00T
626260-NI	Logitech Webcam C270	1	44.25	44.25T
620403-NI	Cyber Acoustics CVL-1084 Microphone	1	25.53	25.53T
	*SHIPPING HAS NOT BEEN INCLUDED IN THIS ESTIMATE.			
	Total sales tax calculated by AvaTax		0.00	0.00
<b>Subtotal</b>				\$36,956.24
<b>Sales Tax (0.0%)</b>				\$0.00
<b>Total</b>				\$36,956.24