RESOLUTION - ACTION REQUESTED 2014-530

MEETING: October 14, 2014

TO: The Board of Supervisors

FROM: Rick Peresan, Technical Services Director

RE: Approve GIS Data Sharing Agreement with Sierra Telephone

RECOMMENDATION AND JUSTIFICATION:
Approve Geographic Information Systems (GIS) Data Sharing Agreement with Sierra Telephone, and authorize the Board of Supervisors Chair to sign the Agreement. Sharing GIS data is to the mutual benefit to Sierra Telephone and Mariposa County. Any exchange of GIS data will be coordinated with the appropriate county positions in the Assessor/Recorder, Technical Services, and Planning Departments.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board approved this agreement in June of 2005. Our current agreement expired in 2011.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The County will not have the Sierra Tel GIS data that benefits our Fire Department.

FINANCIAL IMPACT:
None.

ATTACHMENTS:
Sierra Telephone GIS Data Sharing Agreement (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson
Mary Hodson, interim CAO 10/8/2014
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
Mariposa County
Geographic Information Systems
Base Parcel Map Agreement

This Mariposa County Geographic Information Systems ("GIS") Base Parcel Map Agreement ("Agreement") is made and entered into as of August 14, 2014 by and between the County of Mariposa, California ("County") and Sierra Telephone Company, Inc., a California corporation ("Recipient").

RECITALS

The parties enter into this Agreement on the basis of the following facts, understandings, and intentions.

A. County through its Mariposa County Assessor's Office and Technical Services Department has developed, and is continuing to develop, certain County parcel data of all available County GIS Map Layers for the geographical area covering Mariposa County ("County Parcel Data") that may be compatible with a Geographic Information System ("GIS").

B. County is employing the County Parcel Data solely for the purpose of developing the Mariposa County GIS Map Layers.

C. To further the development of the County’s GIS Map Layers, County is interested in obtaining and employing Recipient’s Mariposa County GIS data under the terms of this Agreement. Recipient is interested in obtaining and employing County’s County Parcel Data under the terms of this Agreement. Each party intends to undertake a further review and confirmation of the other party’s GIS data to confirm the accuracy and completeness of such data for its own purposes.

NOW THEREFORE, in consideration of these recitals, which are incorporated in this Agreement by this reference, and the following mutual promises and intending to be legally bound hereby, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows.

AGREEMENT

1. Exchange of County GIS Data.

1.1. During the term of this Agreement, the County Technical Services Department shall provide the Recipient with complete copies of all County Parcel Data in a machine readable shape file format by ESRI GIS Arc View software. County shall continue to compile, verify, and share with Recipient additional County Parcel Data on a commercially readable basis.

1.2. During the term of this Agreement, Recipient shall provide complete copies of GIS / GPS road, driveway, service location data (service address building shapes, symbols, and polygons only) ("Recipient GIS Data") to the County Technical Services Department for the Recipient’s service area in Mariposa County in a machine readable shape file format readable by ESRI GIS Arc View.
software and continue to compile, verify, and share with County additional Recipient GIS Data on a commercially reasonable basis.

1.3. This Agreement excludes the obligation of either party to provide any parcel data or other information to the other party which is restricted due to confidentiality limitations or applicable law, including but not limited to California Public Utilities Code § 2891 (Restriction on availability of information; written consent, types of information; rescission; civil remedy). In no event shall any Recipient GIS Data contain specific addresses or telephone numbers or be used for political or voter registration purposes.

1.4. The County Parcel Data and Recipient GIS Data shall be shared by and between the Recipient and the County on an as-requested quarterly basis. The first exchange of all current data in the possession of either party shall take place on a mutually agreed date no later than sixty (60) days from and after the date of this Agreement. A single contact person shall be designated by each party to handle the exchange of data and communications under the terms of this Agreement. The contact person for the County is Rick Peresan or such other persons as may be subsequently designated by County in writing. The contact person for Recipient is Marc McNally or such other persons as may subsequently be designated by Recipient in writing. All approvals, submissions, notices, or any other communications or transactions which are made by either party under this Agreement must be made through their designated representative pursuant to Section 5 of this Agreement.

1.5. The County Parcel Data and the Recipient GIS Data is being shared by and between the parties for a public purpose - to enhance public safety planning and incident response as well as the general County public services. The receiving party will not sell or distribute the data it receives from the other party under this Agreement in any form, or allow others to sell or distribute that data in any form, to any third party without the prior written approval of the party contributing the data.

1.6. Neither the County nor Recipient makes any representation or warranty whatsoever, whether expressed or implied, as to the condition, accuracy, or completeness of the exchanged data nor its suitability for any specific purpose.

2. Term.

2.1. The initial term of this Agreement shall be five (5) years commencing on the date of this Agreement and terminating at midnight on the day before the fifth anniversary of the commencement date ("Initial Term") subject to extension. Recipient and County shall have the right to extend the term of this Agreement for up to five (5) additional periods of one (1) year each (each an "Extended Term") and this Agreement shall automatically be renewed for each successive Extended Term unless Recipient or County notifies the other party of its intention not to renew the Agreement before the expiration of the Initial Term or the Extended Term which is then in effect. Each Extended Term shall be on the same terms and conditions set forth in this Agreement. All references to the term of this Agreement shall include by reference the Initial Term and all Extended Terms.

2.2. Recipient may terminate this Agreement without cause at any time upon sixty (60) days prior written notice to County.
3. **Default and Remedies.**

(a) The occurrence of any one (1) or more of the following shall be an Event of Default under this Agreement:

(i) Should the party to be terminated commit a breach of this Agreement and not cure such breach within thirty (30) calendar days from the date of receipt of written notice from the other party specifying the breach and demanding such cure, provided that if such breach is curable but not curable within such thirty (30) day period, the party asserted to be in breach shall not be deemed to be in breach if within the thirty (30) day period it commences to cure the breach and thereafter diligently prosecutes the full cure of the breach to conclusion within such period of time as is reasonably necessary to accomplish such cure, but in no event beyond sixty (60) days from the date of receipt of written notice of breach. In order for the party asserted to be in breach to avail itself of this time period in excess of thirty (30) days, such party must send to the party providing notice of breach, within the thirty (30) day period, a written plan reasonably acceptable to the other party to cure such breach, and then diligently commence and continue performance of such cure to completion according to the written plan and this Agreement; or

(ii) Should the party asserted to be in breach violate or allow a violation of any applicable laws, ordinances, or codes and not cure such violation within thirty (30) days from the date of receipt of written notice from the party specifying the breach and demanding such cure, provided that if such breach is curable but not curable within such thirty (30) day period, the party to be terminated shall not be deemed to be in breach if within such thirty (30) day period it commences to cure the breach and thereafter diligently prosecutes the full cure of the breach to conclusion within such period of time as is reasonably necessary to accomplish such cure, but in no event beyond sixty (60) days from the date of receipt of written notice of breach.

(b) Upon the occurrence of an Event of Default by a party, the non-defaulting party may terminate this Agreement for cause and/or suspend the performance of its obligations under this Agreement, all without prejudice to any other rights and remedies the non-defaulting party may have at law or in equity or under the terms of this Agreement.

4. **Mutual Disclaimer of Warranties and Liability.** NEITHER COUNTY NOR RECIPIENT MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO REPRESENTATION OR STATEMENT MADE BY COUNTY OR RECIPIENT OR ANY OF ITS AGENTS OR EMPLOYEES, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO ANY DISCLOSURES, DESCRIPTIONS, OR STATEMENTS PRODUCED OR MADE TO BY EITHER PARTY SHALL BE BINDING UPON SUCH PARTY AS A WARRANTY.

IN NO EVENT SHALL COUNTY OR RECIPIENT BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, AND/OR EXTRAORDINARY OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, FAULTY DESCRIPTION OR INSTRUCTION, INTERRUPTION OF BUSINESS, OR BY REASON OF MISTAKES, INTERRUPTIONS, DELAYS, ERRORS, DEFECTS IN SERVICE, OR FAULTY OR MISDIRECTED TRANSMISSION) ARISING OUT OF OR RELATED TO EITHER PARTY'S SERVICES OR
DATA OR THE PERFORMANCE THEREOF OR BREACH OF THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

5. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Return Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the addresses shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

County:

Mariposa County
Post Office Box 1156
Mariposa, California 95338
Rick Peresan, Technical Services Director
Telephone: 209-966-8029
Facsimile: 209-966-6029

Company:

Sierra Telephone Company, Inc.
Post Office Box 219
Oakhurst, California 93644
Cindy Huber, Vice President Operations
Telephone: 559-683-4611
Facsimile: 559-641-6066

Company Designated
Project Coordinator:

Sierra Telephone Company, Inc.
Post Office Box 219
Oakhurst, California 93644
Marc McNally, Engineering Supervisor
Telephone: 559-642-0269
Facsimile: 559-642-0360

Each party shall make an ordinary, good faith effort to ensure that such party will accept or receive notices that are given in accordance with this Section, and that any person to be given notice actually receives such notice. All such notices and other communications shall be deemed to have been rendered or given (i) if sent by registered or certified mail, on the date it is officially recorded as delivered to or refused by the intended recipient by return receipt or equivalent, and, in the absence of such record of delivery, the effective date shall be presumed to have been the seventh (7th) day after the date when it shall have been deposited in the mail; (ii) if sent by local messenger service or by Federal Express or other air courier, on the date it is officially recorded by the messenger service carrier as delivered to or refused by the intended recipient; (iii) if personally delivered, upon receipt; or (iv) if by facsimile one (1) hour after its transmission, if such time is during the business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding day in the place of receipt, provided that the
receiving machine delivers confirmation to the sender and receipt is verified by telephone, with
an extra copy immediately following by first-class mail. Notwithstanding the prescribed method
of delivery set forth above, actual receipt of written notice by the natural person designated
above shall constitute notice given in accordance with this Agreement on the date received,
unless deemed earlier given pursuant to the foregoing paragraph.

6. **Miscellaneous.**

(a) **Entire Agreement.** The terms of this Agreement are intended by the parties as
a final expression of their agreement with respect to such terms as are included in this
Agreement and may not be contradicted by evidence of any prior or contemporaneous
agreement. The parties further intend that this Agreement constitutes the complete and
exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any
judicial proceeding, if any, involving this Agreement. The language in all parts of this
Agreement will in all cases be construed as a whole and in accordance with its fair meaning and
not construed for or against either party.

(b) **Amendments and Modifications.** No amendment, modification or supplement,
including those by custom, usage of trade or course of dealing, of any provisions of this
Agreement shall be binding on either party unless it is in writing and signed by the party in
interest at the time of the modification. No oral order, objection, claim or notice by either party
to the other shall affect or modify any of the terms or obligations contained in the Agreement.

(c) **No Waiver by Accepting Varied Performance.** No waiver of any provision or
consent to any action shall constitute a waiver of any other provision or consent to any other
action, whether or not similar. No waiver or consent shall constitute a continuing waiver or
consent or commit a party to provide a waiver in the future except to the extent specifically set
forth in writing. Any waiver given by a party shall be null and void if the party requesting such
waiver has not provided a full and complete disclosure of all material facts relevant to the waiver
requested.

(d) **Assignment.** Recipient may assign this Agreement as a whole with County’s
prior written consent, which shall not be unreasonably withheld, conditioned, or delayed;
provided, however, that County’s consent will not be required for an assignment to any person
or entity which is controlled by, controlling or under common control with Recipient (an
“Affiliate”). For these purposes, “control” means ownership, directly or indirectly, of 50% or
more of the voting stock, equity or beneficial interest or a general partner of any partnership. No
assignment or other transfer shall relieve Recipient of any of its obligations, express or implied,
under this Agreement. Any permitted assignee or other transferee shall expressly assume in
writing, and become bound by, all of Recipient’s obligations under this Agreement.

(e) **Full Cooperation.** County agrees to cooperate with Recipient in executing any
documents necessary to protect Recipient’s rights to Recipient’s GIS Data under this
Agreement or Recipient’s use of the County Parcel Data and to take any further action which
Recipient may reasonably require as to effect the intent of this Agreement, provided that County
shall not be required to execute any agreements or other documents or undertake any activities
by which liabilities are assumed beyond those liabilities assumed by County under this
Agreement.

(f) **Choice of Law.** This Agreement shall at all times be governed by and construed
in accordance with the laws of the State of California without reference to its conflicts of law
principles or jurisprudence.
(g) **Severability.** Any provisions or portion of this Agreement prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions to the extent such interpretation is consistent with applicable law.

(h) **Survival.** All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, expiration, termination, or cancellation of this Agreement, including without limitation this Section, shall survive the completion, expiration, termination, or cancellation of this Agreement.

(i) **Force Majeure.** If the performance of this Agreement, or of any obligation under this Agreement is prevented, restricted, or interfered with by reason of third party labor disputes, government ordinances or requirements, acts of God, acts or omissions of carriers, inability to obtain necessary materials or services from suppliers, acts of war or of terrorism, whether actual or threatened, or other causes beyond the reasonable control of the party whose performance is affected (excluding financial condition, the intentional or negligent act or omission, or default or breach of this Agreement by the party seeking excuse from performance), then the party affected, upon giving prompt notice to the other party, as described below, shall be excused from such performance on a day-for-day basis to the extent of such prevention, restriction, or interference (and the other party will likewise be excused from performance of its obligation on a day-for-day basis to the extent such party’s obligations relate to the performance so prevented, restricted, or interfered with); provided that the party so affected shall use reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed to perform their obligations with dispatch whenever such causes are removed or cease.

(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

(remainder of page is intentionally left blank)
IN WITNESS WHEREOF, the parties have each executed or caused their duly authorized representative to execute this Agreement for and on their behalf as of the date first written above.

SIERRA TELEPHONE COMPANY, INC.,
a California corporation

MARIPOSA COUNTY

By: Cindy A. Huber
Name: Cindy A. Huber
Its: Vice President Operations

By: Kevin Can
Name: Kevin Can
Its: Board Chair

APPROVED AS TO FORM:

[Signature]
STEVEN W. DAHLEM
COUNTY COUNSEL