

DEPARTMENT: Sheriff

By: PELK RICHARDS

PHONE: 966-3615

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

A) Adopt a resolution authorizing the Sheriff to award the contract for the Inmate Phone System to Evercom.

B) Adopt a resolution authorizing the Chairperson of the Board and the Sheriff to sign a three (3) year Contract with Evercom for the Inmate Phone System at the County Jail.

The contract provides an Inmate Telephone System with a percentage of the proceeds going to the Inmate Welfare Fund.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has supported the creation of an Inmate Welfare Fund by passing Resolution 91-612 and has authorized this type of phone contract in the past.

A copy of the contract is attached and a copy of the Evercom Proposal is on file with the Clerk of Board.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

COSTS: (XX) Not Applicable

- A. Budgeted current FY \$ _____
- B. Total anticipated costs \$ _____
- C. Required additional funding \$ _____
- D. Internal transfers \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number

the pages consecutively:

SOURCE: () 4/5ths Vote Required

- A. Unanticipated revenues \$ _____ 0 _____
 - B. Reserve for contingencies \$ _____
 - C. Source description: CIP fund for ACO Facility
- Balance in Reserve for Contingencies, if approved: \$ _____

CLERK'S USE ONLY:

Res. No.: 01-346 Ord. No. _____
 Vote - Ayes: 5 Noes: _____
 Absent: _____ Abstained: _____
 Approved () Denied
 Minute Order Attached () No Action Necessary

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

- _____ Recommended
- _____ Not Recommended
- _____ For Policy Determination
- _____ Submitted with Comment
- _____ Returned for Further Action

Comment: _____

A.O. Initials: [Signature]

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
 ATTEST: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California
 By: _____
 Deputy

ORIGINAL

EVERCOM SYSTEMS, INC.

COMBINED LETTER OF AGENCY AND LETTER OF AUTHORIZATION

RES. NO. 01-346

cc: Auditor
cc

To Whom it May Concern:

We have entered into an agreement with Evercom Systems, Inc. a private inmate telephone service vendor, to act as our communications representative for negotiations with Sierra Telephone for all inmate phone services.

Under the terms of this agreement, and by this letter we do hereby authorize Evercom to install inmate telephone service and have the authority to approve these telephone installations on behalf of the location(s) listed below. Evercom will handle all negotiations for service requests to obtain revenue and usage information for the inmate telephone(s) located at:

**Mariposa County Sheriff's Office
5099 Old Highway North
Mariposa, California 95338**

Evercom is authorized to handle the billing for said customer concerning the inmate telephone(s).

This authorization does not preclude our ability to act in our own behalf if we deem necessary.

Your contact at Evercom will be Pat Legleiter, who can be reached at (800) 947-0899.

Signature: 

Print Name: C.A. "Pelk" Richards

Title: Sheriff/Coroner

Date: 12/20/01

LETTER OF AGREEMENT

THIS LETTER OF AGREEMENT ("LOA") is separate from the INMATE PAY TELEPHONE AGREEMENT ("Agreement") dated 18th of Dec., 2001, and is entered into effect as of the 20th day of Dec., 2001 by and between Evercom Systems, Inc. ("Evercom") and Mariposa County Sheriff's Office, 5099 Old Highway North, Mariposa, California 95338 (collectively, the "Customer").

WHEREAS, Evercom and Customer desire to supplement the services provided by the INMATE PAY TELEPHONE AGREEMENT, by the addition of debit based calling services, as herein set forth in this LOA.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto supplement the Agreement as follows:

- In consideration of the exclusive right to provide debit calling services for the facility (debit calling services defined as any advance paid calling program, facility or non-facility based), Evercom shall provide Customer with Debit Calling Cards or accounts at a rate of Fifty cents (\$.50) per minute at a discount of 30%, (i.e., a \$7.00 charge will apply to a \$10.00 card).
- This LOA has no fixed Term and may be cancelled at any time by either party. This provision concerning the Term of this LOA will have no impact or bearing on the Term of the Inmate Pay Telephone Agreement itself.
- Customer agrees to pay Evercom based on the following terms:
 - Evercom will invoice the cost of debit calling cards minus the discount on a monthly basis. Payment is required within thirty days of receipt of invoice. Interest at the rate of one and one-half percent (1-1/2%) per month shall also apply on all balances not paid timely.

Evercom Systems, Inc.
8201 Tristar
Irving, Texas 75063

Signed: John J. Viola

Name: JOHN J VIOLA

Title: VP

Date: 1-7-02

Mariposa County Sheriff's Office
5099 Old Highway North
Mariposa, California 95338

Signed: C.A. "Pelk" Richards

Name: C.A. "Pelk" Richards

Title: Sheriff/Coroner

Date: 12/20/01

INMATE PAY TELEPHONE AGREEMENT

This Inmate Pay Telephone Agreement (the "Agreement") is made as of the 8th day of Dec. 2001, by and between Mariposa County Sheriff's Office ("Customer") located at 5099 Old Highway North, Mariposa, California 95338 and Evercom Systems, Inc. ("Evercom") located at 8201 Tristar Drive, Irving, Texas 75063.

1. **Utilization of Facility.** The Customer, for and in consideration of the payment of the Commission (as hereinafter defined) and the services to be provided by Evercom, grants Evercom the exclusive right and license to install and maintain an Inmate Telecommunications System governing all inmate calls, including local and long distance traffic for collect calling and potentially debit calling, and inter-related hardware and software, (collectively "Evercom Equipment") within all pre-existing and future jail and/or detention facilities (collectively the "Facility"), and hereby releases the Facility for that purpose, upon the terms and conditions set forth in this Agreement. The Customer covenants and agrees to make the Facility available to Evercom for complete installation and operation of the Equipment. Evercom will install their proprietary inmate call processor CAM-1000.
 2. **Compensation.** In consideration of the right to install and operate the Equipment within the Facility, Evercom agrees to pay the Customer thirty-seven percent (37%) of the gross billed and collected revenue from use of the Equipment through all collect calls, (does not include debit), billed by inmates within the Facility (the "Commission"). "Gross Billed and Collected Revenue" shall mean the gross billable (actual local and long distance call billed via a local exchange carrier) revenue collected, less billing costs and a reserve for bad debt. The Commission shall be paid to the Customer on a monthly basis, as set forth in Section 3 below. Evercom will provide, at the execution of the contract, the County with \$500 in prepaid calling cards as a one-time signing bonus.
- The Customer herein agrees that any current or future use of prepaid calling services (Debit), will be covered by a separate Letter Of Agreement.
3. **Payment and Accounting.** Evercom agrees to pay the Customer the Commission on a monthly basis. The commissions shall be paid no later than sixty days following the month in which revenues were generated from the Equipment during the term of this Agreement. All commission payments shall be final and binding upon the Customer unless written objection thereto is received by Evercom within sixty days of mailing of the Commission payment to Customer by Evercom. Commission payments will be mailed to: Mariposa County Sheriff's Office, P.O. Box 276, Mariposa, California 95338.
 4. **Maintenance and Repair.** During the term of this Agreement, Evercom will repair and maintain the Equipment in good operating condition, including without limitation, furnishing all parts and labor, at its sole cost and expense, all such maintenance shall be conducted in a timely manner, (usually within 24 hours). The Customer shall permit employees or contractors of Evercom reasonable access to the Facility in order to service, repair and maintain the Equipment. The Customer shall notify Evercom of any misuse, destruction, damage or vandalism to the Equipment, as soon as practicable after ascertaining the same. Evercom, by providing equipment or service from third party vendors makes no representation or warranty with respect to such service or equipment and, unless expressly stated herein, makes no commitment to maintain or service such equipment hereafter, all such arrangements should be made by Customer and third party vendor.
 5. **Liability Insurance.** Evercom agrees to maintain comprehensive general liability insurance coverage having limits of not less than \$1,000,000.00 in the aggregate. The Customer agrees to provide Evercom with reasonable and timely notice of any claim, demand or cause of action made or brought against the Customer arising out of, or related to, the utilization of the Equipment. Evercom shall have the right to defend any such claim, demand or cause of action at its sole cost and expense and within its sole and exclusive discretion. The Customer agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the Equipment without the prior written consent of Evercom. In no event shall the Customer be liable for any damage or destruction to any item of the Equipment.

6. **Term of Agreement.** The obligations of the parties under this Agreement are effective as of the date hereof, but the term of his Agreement shall commence upon the date of execution (the "Commencement Date"). This Agreement shall remain in force

and effective for three (3) years from the Commencement Date, hereafter known as the **initial term**. Unless canceled by written notice delivered to either party at least ninety (90) days prior to the termination of the initial term or any renewal term of this Agreement, this Agreement shall automatically renew at the end of the initial term upon the same terms and conditions as set forth herein. Upon cancellation by the Customer after the initial term or any extended term, Evercom has the right to match the financial and service conditions of any competitive proposal under consideration, and upon notification of Evercom's promise to match the proposal, may retain the business for an additional term. If, because of strikes, riots, wars or for any other reason, business operations at the Facility shall be interrupted for periods of time other than as is customary for operations conducted at the Facility, the expiration of the term of this Agreement shall be extended for a period of time equal to the period of such extraordinary interruption or stoppage of business operations.

7. Event of Default, Termination of Agreement. In the event either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall give the defaulting party written notice of default setting forth with specificity the nature of the event of default. In the event the defaulting party fails to cure such event of default within thirty days from receipt of the notice of default, the non-defaulting party shall have the right to terminate this Agreement and pursue all other remedies available to the non-defaulting party, either at law or in equity. If the performance of this Agreement or any obligation hereunder, is interfered with by reason of any circumstances beyond the reasonable control of the parties, including without limitation, fire, explosion, riots, civil unrest, power failures, injunctions, or acts of God, then the party affected shall be excused from such performance on a day-to-day basis to the extent of such interference, provided the party so affected shall use reasonable efforts to remove such causes of no-performance. In the event any governmental tariff or regulation prevents Evercom from providing services, or such tariffs or regulations make continuation of this agreement impractical for economic reasons or otherwise, then Evercom, at its sole discretion, may terminate this Agreement without liability. In the event of a termination of this Agreement for any reason, the Customer agrees to allow Evercom access to the facility in order to remove the Equipment. Evercom agrees to remove the Equipment within thirty days after termination of this Agreement.

8. Authority. Each party to this Agreement warrants and represents that they have the unrestricted right and requisite authority to enter into and execute this Agreement, to bind the respective party, and to authorize the installation and operation of the Equipment.

9. Notices. Any notice or demand under the terms of this Agreement or under any statute made by either party shall be in writing and shall be given or made by mail, postage prepaid, addressed to the respective party as listed on signature page of this agreement.

10. Miscellaneous.

A. This Agreement shall be construed under and is enforceable under the laws of the state where Evercom services are performed.

B. No waiver by either party of any event of default under this Agreement shall operate as a waiver of any subsequent default under the terms of this Agreement.

C. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

D. This Agreement shall be binding upon and inure to the benefit of Evercom and the Customer, and their respective successors and assigns.

E. This Agreement may be executed in counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. This Agreement constitutes the entire Agreement of the parties. The rights and obligations of the parties shall be determined solely from the terms of this Agreement and any prior or contemporaneous oral agreements are superseded by and merged into this Agreement.

F. This Agreement cannot be varied or modified orally and can only be varied or modified by a written instrument signed

by all parties.

G. Evercom, at its sole cost and expense shall secure the state, county or federal governmental authority licenses required for the provision of services contemplated in this Agreement.

H. During the term of this agreement, the Equipment installed in the facility pursuant to this Agreement shall remain the sole and exclusive property of Evercom.

EXECUTED as of the date and year signed below:

Evercom Systems, Inc.

By: *John Viola*

Name: John Viola

Title: Vice President, Sales and Marketing

Date: 1-21-02

Mariposa County

By: *Doug Balmain*

Name: Doug Balmain

Title: Chairman, Board of Supervisors

Date: December 18, 2001

By: *Pelk Richards*

Name: Pelk Richards

Title: Sheriff

Date: 12/20/01

By: _____

Name: _____

Title: _____

Date: _____