INMATE PAY TELEPHONE AGREEMENT ORIGINAL

This Inmate Pay Telephone Agreement ("Agreement") is made as of this 12 day of April, 2004 (the "Effective Date") by and between the City of Costa Mesa, California municipal corporation ("City") and Evercom Systems, Inc., a Delaware corporation ("Evercom").

For and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. **License for Telephone Service.** The City hereby agrees to grant a license to Evercom for the sole and exclusive right to install, maintain, operate, and derive revenue from an inmate telecommunications system governing all inmate telephone services, including, without limitation, local and long distance traffic for collect calling and debit calling and related equipment (collectively, the "Telephone Equipment") at the Costa Mesa Jail located at 99 Fair Drive, Costa Mesa, California (the "Facility").

2. **Compensation.** Evercom agrees to pay the City forty percent (40%) of the monthly gross revenue generated by the Telephone Equipment located at the Facility as compensation for the right to install, maintain, operate, and derive revenue from the Telephone Equipment within the Facility (the "Commission"). Gross Revenue shall mean the gross billable (actual local and long distance call billed via a local exchange carrier) revenue (excluding taxes, if any). The Commission shall be paid to the City on a monthly basis, such payment being due to City within thirty (30)days following the month in which revenue is generated by Evercom. Evercom agrees to furnish City reasonable documentation verifying the Commission within a reasonable amount of time after written request by City. All Commission payments shall be final and binding upon City unless Evercom receives written objection within 60 days after the date of payment. Any change in City's remittance address shall take be effective 30 days after Evercom's receipt of written notice of such change. Evercom will also upgrade the Inmate Phone System currently being used by the City to the Call Applications Manager (CAM) System at no charge to the City. Notwithstanding the foregoing, if City desires to sell prepaid phone cards in its Facility, the parties shall negotiate and execute an amendment to this Agreement that sets forth the terms of such prepaid card arrangement.

3. **Billing.** Evercom shall be responsible for the billing and collection of all telephone line charges including, but not limited to, information in connection with telephone activity conducted with any long distance or other operating company.

4. **Term.** The term of this Agreement shall be a period of five (5) years from the Effective Date, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

5. **Maintenance/Repair.** The Telephone Equipment shall remain Evercom's property. During the term of this Agreement, Evercom will repair and maintain the Telephone 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. City shall provide reasonable access to the Facility in order to service, repair and maintain the Telephone Equipment. City shall notify Evercom of any misuse, destruction, damage or vandalism to the Telephone Equipment, as soon as practicable after ascertaining the same. Within thirty (30) days after termination of this Agreement, Evercom agrees to remove all Telephone Equipment from the Facility (except for any wiring and cabling) and restore those portions of the Facility physically altered by the installation of Telephone Equipment to their pre-installation condition, reasonable wear and tear excepted. Notwithstanding anything to the contrary herein, Evercom may recoup any cost of repair caused by misuse of, or destruction, damage, or vandalism to, the Telephone Equipment, reasonable

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wear and tear excepted, by City (not inmates at the Facility) either through a Commission deduction or direct invoicing, at Evercom's option.

6. **Indemnification.** EVERCOM SHALL DEFEND, INDEMNIFY AND HOLD CITY, AND ITS AFFILIATES, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND SUCCESSORS HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, COSTS, EXPENSES, DAMAGES, OR LIABILITIES OF ANY NATURE, INCLUDING REASONABLE ATTRONEY FEES , FOR INJURY TO OR DEATH OF ANY PERSON, AND FOR INJURY TO ANY PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES, OF ANY NATURE THEREFROM, ARSING OUT OF OR IN ANY WAY CONNECTED WITH THE NEGLIGENT PERFORMANCE OF THIS AGREEMENT BY ACT OR OMISSION, BY OR ON BEHALF OF EVERCOM OR RESULTING FROM ANY VIOLATION BY EVERCOM OF ANY STATUTE, LAW, REGULATION OR OTHER LEGAL REQUIREMENT. IN THE EVENT AN ALLEGATION THAT THE SERVICES CONTEMPLATED HEREIN INFRINGE A PATENT, COPYRIGHT, TRADEMARK, OR ANY OTHER PROPRIETARY RIGHTS OF A THIRD PARTY IS MADE OR THREATENED AGAINST CITY, OR INJUNCTIVE RELIEF IS GRANTED TO A CLAIMANT, EVERCOM SHALL (a) OBTAIN THE RIGHT FOR CITY TO CONTINUE USE OF THE SERVICES; OR (b) SUBSTITUTE OTHER SERVICES OF LIKE CAPABILITY; OR (c) REPLACE OR MODIFY THE SERVICES TO RENDER THEM NON-INFRINGING WHILE RETAINING LIKE CAPABILITY. IF EVERCOM IS UNABLE TO PERFORM ANY OF THE ACTIONS IN CLAUSE (a), (b), or (c) ABOVE, THEN CITY MAY TERMINATE THIS AGREEMENT UPON PRIOR WRITTEN NOTICE TO EVERCOM WITHOUT INCURRING ANY TERMINATION PENALTIES. INDEMNIFICATION BY EVERCOM PURSUANT TO THIS SECTION SHALL BE CUSTOMER'S SOLE REMEDY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIRD PARTY CLAIMS. THE INDEMNITIES HEREIN SHALL SURVIVE THE EXPIRATION OR OTHER TERMINATION OF THIS AGREEMENT.

7. **Insurance.** Evercom shall obtain and maintain during the life of this Agreement all of the following minimum insurance coverages:

Comprehensive general liability, including premises-operations, products/completed operations, personal injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate.

Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate.

Workers' compensation insurance as required by the State of California.

The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."

Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess

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and not contributing with the insurance provided by this policy."

Evercom shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Evercom may be held responsible for payments of damages to persons or property.

8. Independent Contractor. Evercom is and shall be acting at all times as an independent contractor and not as an employee of City. Evercom shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Evercom and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

9. Non-Discrimination. In performing this Agreement, Evercom shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

10. Attorney's Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

11. Governing Law. Evercom and City agree that any and all disputes arising our of or in connection with this Agreement shall governed by the law of Delaware (without giving effect to its conflict or choice of law rules) be brought only in the Superior Court of the County of Orange, State of California. Evercom and City each consent to the jurisdiction of the Superior Court of the County of Orange, State of California, and each agree to the service of process in accordance with the laws of the State of California.

12. Default. In the event either party fails to perform any of the provisions of this Agreement, the other party may give written notice to the defaulting party of the intention to terminate this Agreement with cause and, unless within thirty (30) business days after the serving of that notice, such conduct shall cease and satisfactory arrangements for the correction thereof be made, this Agreement may be terminated with 30 days' prior written notice at the option of the non-defaulting party.

Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

13. Notice. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such

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communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO EVERCOM:	IF TO CITY:
Evercom Systems, Inc. 8201 Tristar Drive Irving, TX 75063 Fax: (972) 953-4270	City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626 Fax: (714) 754-5124
Attn: Michael E. Kenyon	Attn: Lt. Allen Huggins

14. Drug-Free Workplace Policy. Evercom shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Attachment 1 and incorporated herein by reference. Failure to conform with the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by City in accordance and pursuant to Section 12.

15. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

16. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

17. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

18. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

20. Limitation of Liability and Disclaimer of Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT WITH REGARD TO EVERCOM'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 6, EVERCOM SHALL

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HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR INCOME, LOST OR CORRUPTED DATA, OR LOSS OF USE OR OTHER BENEFITS ARISING OUT OF OR IN ANY WAY RELATED TO ANY PRODUCT OR SERVICE PROVIDED PURSUANT TO THIS AGREEMENT. ANY LIABILITY OF EVERCOM UNDER THIS AGREEMENT SHALL BE LIMITED TO ACTUAL DAMAGES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EVERCOM'S OBLIGATIONS UNDER THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. EVERCOM MAKES NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT WITH REGARD TO ANY PRODUCT OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. EVERCOM IS NOT RESPONSIBLE FOR ANY MANUFACTURER'S WARRANTIES.

21. Successors. Neither party shall assign its right, obligations, or interests under this Agreement unless the other party provides its prior written consent thereto, which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

22. Change in Requirements. If Evercom, in its sole discretion, determines that the revenue generated by the Facility is insufficient to justify continued service or that the Telephone Equipment requirements of the Facility were not contemplated under this Agreement, Evercom shall have the right to terminate or renegotiate this Agreement upon 30 days' prior written notice to City.

23. Software. City acknowledges that the Telephone Equipment shall at all times remains the sole and exclusive property of Evercom and that any software provided by Evercom in conjunction with the Equipment and the Services is subject to the terms and conditions of the Master Proprietary Software Agreement attached as Attachment 2.

24. Confidential Information. All information, software, equipment and related services provided by Evercom hereunder ("Confidential Information") shall at all times remain proprietary and confidential to Evercom. City shall not disclose such Confidential Information to any third party without Evercom's prior written consent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

John Hensley, Chief of Police
Costa Mesa Police Department

EVERCOM SYSTEMS, INC.

John J Viola

JOHN J VIOLA
Name and Title VP Sales

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APPROVED AS TO FORM:

for Linda Nguyen, DCA
City Attorney

APPROVED AS TO CONTENT:

Lt. Allen Huggins

CITY OF COSTA MESA

CALIFORNIA 92628-1200 P.O. BOX 1200

FROM THE OFFICE OF THE CITY CLERK

IF YOU ARE INTERESTED IN VIEWING THE REMAINDER OF THE THIS DOCUMENT PLEASE CONTACT THE CITY CLERK'S OFFICE AT (714) 754-5221