



CITY COUNCIL AGENDA REPORT

MEETING DATE: AUGUST 7, 2012

ITEM NUMBER:

SUBJECT: INMATE PAY TELEPHONE MASTER SERVICE AGREEMENT BETWEEN CITY AND LEGACY INMATE COMMUNICATIONS

DATE: JUNE 26, 2012

FROM: POLICE DEPARTMENT- JAIL OPERATIONS DIVISION

PRESENTATION BY: JOYCE LA POINTE, JAIL SERGEANT

**FOR FURTHER INFORMATION CONTACT: JOYCE LA POINTE
(714) 754-5663**

RECOMMENDED ACTION:

Approve the five-year agreement with Legacy Inmate Communications to provide an inmate telephone system in the Jail at a 55% commission rate.

BACKGROUND:

Pursuant to TITLE 15-CRIME PREVENTION AND CORRECTIONS DIVISION 1, CHAPTER 1, SUBCHAPTER 4, SECTION 1067, "Facility [Jail] administrator shall develop written policies and procedures which allow reasonable access to a telephone beyond those telephone calls which are required by Section 851.5 of the Penal Code." Telephones located in the individual cells allow inmates to communicate with family members, legal representation, etc., without overburdening Jail staff members, and the telephones adhere to the above referenced Title 15 regulations.

Additionally, California law allows private companies to install and maintain telephone systems in the jail facilities. Companies offering this service normally pay a commission to the user facility. Commission monies are deposited into an Inmate Welfare Fund. The proceeds and interests that accumulate in the Fund may be used for expenses that benefit the inmates. Any monies that are not needed for inmate welfare may be expended for City Jail maintenance, pursuant to CPC section 4025(e).

Since January of 2000, the City Jail has been under contractual obligation with, and utilizing the equipment and services of, Evercom Systems, Inc.

In January of 2012, negotiations began with Evercom Systems, Inc., to renegotiate their contract renewal and continuation of their services. During the course of the negotiation process, Evercom informed the City that the City's inmate telephone usage had significantly declined over the last several years to a point that the monies generated

scarcely covered the maintenance. Due to this decline, Evercom Systems, Inc. renegotiated their contract with the City in March of 2010. Commissions were negotiated from 40% to 0% with the promise to increase when phone service usage increased. The City approved a one-year renewal at the end of March 2011.

This evaluation period ended and it was maintained with the current mutually agreed upon month to month contract resulting in 0% commissions for the City Jail.

ANALYSIS:

The City Jail utilizes the services of Evercom Systems, Inc., which is becoming antiquated and recently almost severely compromised a homicide investigation due to improper documentation of phone calls in the Jail. Evercom Systems, Inc. maintains that the monies generated from current inmate phone usage are not enough to maintain the costs of their phone service and refuse to renegotiated commission percentage. Evercom Systems Inc. was contacted and asked to provide an accounting of their cost for the operation of their system. They declined to provide that information. Since that time, other vendors were interviewed and Legacy Inmate Communications was identified as a leader. Legacy provides a Web Based phone system that benefits the City Jail with increased commissions and benefits the Costa Mesa Police Departments Investigation Unit with better inmate phone call access.

Legacy will provide all equipment and install at no cost to the City. Legacy agrees to pay the Costa Mesa Police Department Jail Facility 55% commission.

Last year, the Jail Facility phones had 323 minutes of use with a total revenue of \$2,154.53. The City received 0% of the revenue. If the City approves service with Legacy Inmate Communications and have a comparable phone usage to last year, they would receive \$1,184.99 in commissions at the 55% rate from Legacy.

ALTERNATIVES CONSIDERED:

Deny request to change Inmate Phone service provider to Legacy Inmate Communications at 55% commission return and continue month-to-month service contract with Evercom Systems at 0% commissions.

FISCAL REVIEW:

There is no cost to the City of Costa Mesa for the change over. At a comparable inmate phone usage, the Inmate Welfare fund will be receiving approximately \$1,184.99 per year, compared to the 0% commissions we are receiving now.

LEGAL REVIEW:

The City Attorney's Office has reviewed the Grant Agreement and associated documents and has approved it as to form and content.

CONCLUSION:

Evercom Services, Inc. has provided the City of Costa Mesa Police Department Jail with a well functioning inmate phone service for several years, but it has become outdated technology. The new updated web based technology Legacy has to offer will provide

inmates with phone access, assist Costa Mesa Police investigators and bring in 55% of inmate phone revenues to assist with inmate welfare costs.



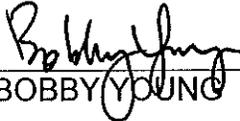
JOYCE LAPOINTE

Jail Sergeant



TOM GAZSI

Chief of Police



BOBBY YOUNG

Finance Director



TOM DUARTE

City Attorney

DISTRIBUTION: CEO
City Attorney
Finance Director
City Clerk

ATTACHMENTS: 1 Legacy Inmate Communications
Contract



Inmate Telephone System Agreement

This Agreement is made this the 6th day of June, 2012, by and between Legacy Inmate Communications a dba of Legacy Long Distance International, Inc. ("Legacy" or "the Company") with principal offices at 10833 Valley View Street - Suite 150, Cypress, CA, 90630 and the City of Costa Mesa ("City"). With the Costa Mesa Police Department located at 99 Fair Drive, Costa Mesa CA, 92626.

RECITALS

WHEREAS, Legacy will install and maintain the Inmate Communications Management System - ICON™. ICON™ is a complete turnkey Inmate Calling Network with investigative, technical, and administrative communication features; and

WHEREAS, Legacy will provide and maintain for the life of this Agreement new Inmate telephones to be installed at the Costa Mesa Police Department; and

WHEREAS, the Company is in the business of providing various inmate communication services, operator assisted telecommunication services; and

WHEREAS, the Costa Mesa Police Department operates and/or manages a correctional facility/detention center; and

WHEREAS, the City desires to enter into this Agreement in order to permit Inmates/Detainees the use of company installed telephones to place collect, collect pre-paid, and/or Debit calls via Legacy's services; now

THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties do hereby contract and agree as follows:

1. SERVICES PROVIDED BY LEGACY

1.1 Services.

- (a) Collect Calls. To the extent consistent with applicable federal and state laws, rules and regulations, Legacy agrees to provide, and the City hereby agrees to accept the provision of operator services with automated assistance for the Costa Mesa Police Department. Each operator service call originating from the telephones and placed through the Company may be charged "collect" to pre-approved destinations. Legacy will validate each call through the national Line Information Database (LIDB) and will only process "collect" calls to destination points that do not have registered blocks. Calls shall only be billed upon "acceptance" by the destined party. Legacy shall notify each called destination that the call is coming from the Costa Mesa Police Department, announce the name of the "caller/inmate", provide an option to access rate information, and allow for acceptance or denial of the call.

- (b) Pre-Paid "Collect" Service. Legacy agrees to provide pre-paid collect service as needed. The Company will provide a toll-free access number for friends and family to call to set up prepaid "collect" service accounts. The Company shall also provide access to an internet-based website where prepaid services can be ordered. Legacy shall also provide its "Friends and Family" program.
- (c) Debit Card/Cardless Debit. Legacy agrees to provide Debit Card and/or Cardless Debit services as required under this Agreement.
- (d) Inmate Phones. The Company agrees to provide the inmate phones for the entire period of this agreement. Including adding additional phones as needed and requested by the Costa Mesa Police Department.
- (e) Communications Management System (ICON™). The Company agrees to provide access to its Inmate communications management system - ICON™. ICON™ shall provide the Costa Mesa Police Department with the ability to record and store all Inmate calls, live monitor Inmate calls, detail reporting of call traffic, and all other options and services offered in the Company's proposal for Inmate Telephone Services.

2. COMPENSATION

- 2.1 Commissions. The Company agrees to pay the Costa Mesa Police Department Fifty Five percent (55%) of all billed and collected automated "collect" operator service traffic and prepaid "collect" service.
- 2.2 Payment. The Company shall remit all due commissions to the Costa Mesa Police Department thirty (30) days after the end of each calendar month (EOM).
- 2.3 Payment Calculation. Gross billable revenue is calculated as the sum of minutes and charges. Commission due the Costa Mesa Police Department shall be calculated as the product of the total gross billable revenue multiplied by the contracted percentage allowance.

3. INSURANCE

- 3.1 Minimum Scope and Limits of Insurance. Legacy shall obtain and maintain during the life of this Agreement all of the following insurance coverages:
 - A. Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, Independent contractors, personal Injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
 - B. 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.
 - C. Workers' compensation insurance as required by the State of California.

D. Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Legacy shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

A. 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."

B. 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 the City of Costa Mesa."

C. Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

3.3 Certificates of Insurance: Legacy 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.

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

4. COMPLIANCE WITH LAW

4.1 Compliance with Law. Legacy shall comply with all laws, rules and regulations affecting its obligations in conjunction with the provision of the including, without limitation, those relating to provision of information to end users regarding operator services.

5. TERMINATION, DEFAULT, AND CANCELLATION

5.1 Term of the Agreement. The term of this Agreement shall commence on the date of the establishment of services at the Costa Mesa Police Department and shall remain in effect for a period of Five (5) years.

5.2 Renewal Options. Upon completion of the Five (5) year term, the City, at its own discretion, may exercise an option to renew the terms of this agreement, for an additional three (3) one (1) year terms. The City will provide Legacy with sixty (60) day notice of its intent to renew the Agreement. All terms and conditions shall remain in effect during the subsequent renewal periods.

5.3 Default. If either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default setting forth with specificity the nature of the default. If the

defaulting party fails to cure its default within thirty (30) days after receipt of the notice of default, then the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days written notice and pursue all other remedies available to the non-defaulting party, either at law or in equity. Notwithstanding the foregoing, the thirty (30) day cure period shall be extended to ninety (90) days if the default is not reasonably susceptible to cure within such thirty (30) day period, but only if the defaulting party has begun to cure the default during the thirty (30) day period and diligently pursues the cure of such default.

6. MISCELLANEOUS

- 6.1 Indemnification. Legacy shall protect, defend, indemnify and hold harmless the City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Legacy, its employees, agents or subcontractors in the performance of this Agreement.
- 6.2 Attorneys' 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.
- 6.3 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of California and shall be deemed performable in the City of Costa Mesa. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- 6.4 Assignment. Notwithstanding the foregoing, neither the City nor Legacy may assign their rights and obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 6.5 Enforceability. The invalidity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof.
- 6.6 Notice. Notice shall be deemed to have been received upon receipt of a postage-prepaid letter or telephone facsimile transmission at the addresses set forth in the next sentence, unless otherwise changed by written notice from time to time. Notice to the Company shall be sent to Legacy Inmate Communications, 10833 Valley View Street - Suite 150, Cypress CA 90630. Attention: Contract Administrator, facsimile: 800-700-1116.

Notice to the City shall be sent to:

- 6.7 Regulatory Requirements. This Agreement shall be construed in accordance with applicable state and federal laws, rules and regulations. In the event those regulatory or legal requirements are in any manner inconsistent with or require modification to the terms of this Agreement subsequent to the date of execution hereof, no written amendment or variation executed by both parties shall be necessary. Rather, any such amendment or variation shall be effective upon mailing of written notice by the Company via first-class, postage-prepaid mail or telephone facsimile transmission of written notice to the City.
- 6.8 Confidentiality. Legacy and the City agree to hold confidential all information shared that may be marked or indicated by the other. The City understands that Legacy's Inmate communications operating system, ICON™, is proprietary and access to and all information about the system are to be considered confidential unless disclosure is required by state or federal law. Access to the system cannot be granted to any non-designated facility personnel. Should the City contract with a Vendor in the future to replace Legacy, the City will insure that the ICON™ system is not viewed or accessed by the Vendor.
- 6.9 Entire Agreement. This Agreement, together with its exhibits and schedules, 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.
- 6.10 Service Proposal for Inmate Telephone Service. It is agreed by both parties that Legacy's proposal to the City for Inmate Telephone Service shall serve as an addendum to this Agreement. All services, conditions, and terms set forth in Legacy's proposal shall be considered part of this Agreement. Where any term or provision of the proposal conflicts with any term or provision of this Agreement, this Agreement will govern.
- 6.11 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.
- 6.12 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.

Profile Setup Form
Please complete this form in its entirety

Date: 4/5/2012

Facility Information

Facility Name: Costa Mesa
Facility Physical Address: 99 Fair Drive
Facility Mailing Address: Same
City: Costa Mesa State: Ca Zip: 92628
Facility type: Police Department Contract Type: New

Contact Information

Contact Name: Jocelyn Lapointe
Title: Jail Administrator
Phone: (714) 745-5663 Fax: (714) 745-5863 Cell: () -
Email: JLAPOINTE@costamesaca.gov

Equipment

Inmate Phones: 8 Model: OTC-2110v SS
Visitation Phones: 0 Model: Click here to select model
TTY/TDD Phones: 0
Rollaway phones: 0
Phone enclosures: 0
Call detection unit: 0 Model: Click here to select model
Cordless phones: 0
Workstation: 0
Monitor: 0
Printer: 0
Backup power Supply: 1
Payphones: 0

Services

Options:

Record / Monitor Inmate calls: Yes Record / Monitor visitation phones: Select option
J.M.S/ O.M.S. Integration: Yes Kiosk Integration: Select option
Current vendor J.M.S/ O.M.S: City Ownes JMS Current vendor Kiosk:
PIN required for ITS:Select option PIN required for debit card calling: Select option
AccuPin: Select option Location Based Services: Select option

Payment

options:

Wire transfer: No UPS overnight: Select option Regular mail: Yes

Mailing address: