



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: May 21, 2020

Staff Contact: Carol Akers and Sheriff Ken Furlong

Agenda Title: For Possible Action: Discussion and possible action regarding an Inmate Telephone Services Agreement (File No. 19300162) with Inmate Calling Solutions, LLC, d/b/a ICSolutions (ICS) to provide inmate telephone services for the Carson City Jail Facility, pursuant to which ICS must pay to the Carson City Sheriff's Office (CCSO) a commission of 55% of the gross revenue for all call types generated from the designated service locations . (Carol Akers, CAkers@carson.org and Sheriff Ken Furlong, KFurlong@carson.org)

Staff Summary: The current inmate phone provider for the Carson City Jail is ICS. The department has been satisfied with the services they provide as well as the function of the system. The CCSO is currently looking to upgrade the system to include 11 touchscreen inmate self-service kiosks and three video kiosks intended for confidential communication between inmates and their attorneys. There will be no cost for communication between inmates and their attorneys. This new agreement will also increase the commission rate to 55% of total gross revenue, which was previously reduced to 45.1% in 2016. This is a revenue generating agreement and there are no expenditures associated with this agreement.

Agenda Action: Formal Action / Motion

Time Requested: Consent

Proposed Motion

I move to approve the agreement as presented and authorize the Sheriff to sign the agreement.

Board's Strategic Goal

Efficient Government

Previous Action

The previous agreement (File No. 1415-150) was approved on March 19, 2015 by the Board of Supervisor's for three years with automatic renewals for two additional terms of one year.

On July 7, 2016 the Board of Supervisors approved Amendment No. 1 to reduce the commission rate to 45.1% and changed various calling rates as a result of the Federal Communication Commission (FCC) implementing changes.

Background/Issues & Analysis

This new agreement will provide 11 V17 Touchscreen Kiosks to offer inmate self-service functions/commissary ordering as well as three video visitation system stations for confidential communication between inmates and

their attorneys. There is no charge to the attorneys or the inmates for confidential communications using this product.

Applicable Statute, Code, Policy, Rule or Regulation

N/A

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Telephone Commissions / 2802080 463200

Is it currently budgeted? Yes

Explanation of Fiscal Impact: This is a revenue generating contract. Commissions resulting from this agreement are used to partially fund operations of the Inmate Commissary. Telephone commission revenue is deposited in account 2802080 463200. The telephone commission for the past 24 months have averaged \$7,221 per month totaling \$86,652 average annually. Using those averages the net average increase moving from 45.1% to 55% would be \$1,585 per month or \$19,020 increase annually. With this increase the new estimated yearly revenue would be \$105,672. The increases have not considered any Covid-19 related changes in revenue. The revenues have not been received for April 2020 commissions, but the March 2020 Revenue was \$7,443.32 as compared to March 2019 of \$7,512.87 and March 2018 of \$7,739.01. There have been some salary savings in the commissary account over the last few months and the CCSO has \$209,000 cash on hand. This savings and cash on hand along with the increase in revenue as it relates to this contract change, will give the commissary the ability to weather some dips in revenue that the Covid-19 pandemic may create.

Alternatives

Do not approve the contract and provide alternative direction to staff.

Attachments:

[Carson City NV - Contract.pdf](#)

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)

INMATE TELEPHONE SERVICES AGREEMENT

This Inmate Telephone Services Agreement ("Agreement") is made by and between Inmate Calling Solutions, LLC, d/b/a ICSolutions ("ICS"), having its principal place of business at 2200 Danbury Street, San Antonio, TX 78217, and Carson City, a consolidated municipality, through the **Carson City Sheriff's Office** (the "County") having its principal address as set forth on Exhibit A, attached hereto.

Whereas, the parties were parties to that certain Inmate Telephone Services Agreement dated May 1, 2015 (the "Prior Agreement"); and

Whereas, the parties now agree as follows:

1. **Term of Contract.** This Agreement shall commence on May 1, 2020 (the "Effective Date") and shall remain in full force and effect for five (5) years from the Effective Date. This Agreement shall automatically renew for additional terms of one (1) year, each upon the same terms and conditions as set forth herein, unless either party otherwise provides written notice to the other party at least ninety (90) days prior to a scheduled renewal. Notwithstanding the foregoing, either party may terminate this Agreement, based on a material, adverse economic change beyond such party's reasonable control, with sixty (60) day's prior written notice. Upon termination of this Agreement, County shall immediately cease the use of any Equipment provided hereunder.
2. **Equipment.** This Agreement applies to the provision of Equipment by ICS within space provided by the County at each of the "Service Locations" listed on Exhibit A, attached hereto. The term "Equipment" is defined herein as telephone sets and computer systems and software, all as more fully described on Exhibit B, attached hereto. All Equipment shall be installed by properly trained personnel and in a good, workmanlike manner. Any Equipment of ICS installed upon the premises owned, leased or otherwise under the supervision of County, shall remain in all respects the property of ICS. ICS reserves the right to remove or relocate any Equipment that is subjected to recurring vandalism or insufficient usage. ICS shall not exercise such right of removal or relocation unreasonably and, in any case with at least thirty (30) days prior notice to County. Upon removal of Equipment by ICS, ICS shall restore the premise to its original condition, ordinary wear and tear excepted.
3. **Alteration and Attachments.** County shall not make alterations or place any attachments to Equipment and Equipment shall not be moved, removed, rendered inoperable or unusable, or made inaccessible to inmates or users by County without the express written permission of ICS.
4. **Training.** ICS shall provide on-site training plus internet-based training at no cost to County. Additional training may be provided upon County's request based on availability of ICS.
5. **Call Rates.** ICS shall provide collect calling services to End-Users, on both a pre-paid and post-billed basis, at the rates and charges set forth on Exhibit C, attached hereto. ICS reserves the right to establish thresholds for the level of collect call credit to be allowed by the billed consumer. Rates and charges may be subject to change based on an order or rule of a regulatory authority having applicable jurisdiction.
6. **Commissions to County.** ICS will install, operate and maintain Equipment at no charge to County. ICS will pay County the commission amounts set forth on Exhibit D, attached hereto (collectively the "Commissions"), in consideration of the County granting ICS exclusive rights for the installation and operation of Equipment servicing the Locations. No Commissions shall be paid to County on amounts relating to taxes, regulatory surcharges such as universal service fund, or other fees and charges not applicable to the billed calls.

ICS will pay Commissions to County on a monthly basis on or before the first business day occurring 45 days following the end of the month in which such Commissions are earned or accrued. Such Commissions shall be sent to the address designated by County or wired to an account designated in writing by County for such purpose.

County agrees that all Commissions are subject to change based on any changes that may be required by the applicable Public Service Commission or any policy, regulation or tariff governed by a regulatory body having jurisdiction over the public communications contemplated herein. In addition, Commission rates are predicated on County maintaining an average daily inmate population consistent with the average of the three months preceding the Effective Date and having access to telephones materially consistent with industry practice.

7. County shall:

- a. Advise ICS of any Services Location or related premise that has been closed.
- b. Throughout the term of this Agreement, including any renewal terms, use ICS as its exclusive provider for all matters relating to inmate telecommunication services.
- c. Reasonably protect the Equipment against willful abuse and promptly report any damage, service failure or hazardous conditions to ICS.
- d. Provide necessary power and power source, at no cost to ICS, and an operating environment with reasonable cooling consistent with general office use.
- e. Provide suitable space and accessibility for inmates' use of telephone services.
- f. Permit ICS to display reasonable signs furnished by ICS and not affix or allow to be affixed any other signs, equipment or information to the Equipment.
- g. Permit reasonable access by ICS to County's Locations as reasonably necessary for ICS to install, support and maintain the Equipment.
- h. Comply with all federal, state and local statutes, rules, regulations, ordinances or codes governing or applicable to the telephone services offered by ICS.

8. Law and Venue. The domestic law of the State of Nevada shall govern the construction, interpretation and performance of this Agreement and all transactions hereunder. All disputes hereunder shall be resolved exclusively in state or federal jurisdictions located in Carson City, Nevada.

9. Notices. Any notice or demand required hereunder shall be given or made by mail, postage prepaid, addressed to the respective party at the address first set forth above unless otherwise communicated in writing.

10. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Any orders placed by County hereunder shall be incorporated herein by mutual consent of the parties and shall supplement but not supersede the provisions of this Agreement. The County represents and warrants that it has the legal authority to make decisions concerning the provisions of space for telephones placed by ICS at the Service Locations covered by this Agreement and that ICS may rely thereon. This Agreement supersedes any prior written or oral understanding between the parties.

11. **Risk of Loss.** ICS shall relieve County of all risk of loss or damage to Equipment during the periods of transportation and installation of the Equipment. However, County shall be responsible for any loss or damage to Equipment located on the premise caused by fault or negligence of County, its employees or others under County's supervision.
12. **Default.** In the event either party shall be in breach or default of any terms, conditions, or covenants of this Agreement and such breach or default shall continue for a period of thirty (30) days after the giving of written notice thereof by the other party; then, in addition to all other rights and remedies at law or in equity or otherwise, including recovering of attorney fees and court cost, the non-breaching party shall have the right to cancel this Agreement without charge or liability. The waiver of any default hereunder by either party shall not constitute, or be construed as, a waiver of any subsequent default. In the event a Party is awarded attorney's fees under this Agreement or by a court, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.
13. **Assignment.** This Agreement may be transferred or assigned, in whole or in part, by ICS to any parent, successor, subsidiary, or affiliate of ICS. ICS may sub-contract any portion of its duties hereunder provided; however, it shall remain at all times responsible for such sub-contracted duties. This Agreement may otherwise only be transferred or assigned by a party with the written consent of the other party, which consent shall not be unreasonably withheld or delayed.
14. **Relationship.** The parties hereto are independent contractors and this Agreement shall not be construed as a contract of agency or employment. Each party shall be solely responsible for compliance with all laws, rules and regulations and payment of all wages, unemployment, social security and any taxes applicable to such party's employees. Each party represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate actions; (c) its performance hereunder shall be in compliance with applicable state and federal legal and regulatory requirements.
15. **Indemnification.** Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, losses, injuries, or demands asserted by third parties (collectively "Claims") arising from the material breach, negligent acts or misconduct of such indemnifying party, its agents or employees, in the performance of any of its obligations hereunder. Except for the foregoing express indemnification, each party shall bear its own liability and costs of defense for any third-party claims.
16. **Force Majeure.** Either party may suspend all or part of its obligations hereunder and such party shall not otherwise be held responsible for any damages, delays or performance failures caused by acts of God, events of nature, civil disobedience, military action or similar events beyond the reasonable control of such party.
17. **Severability.** If any of the provisions of this Agreement shall be deemed invalid or unenforceable under the laws of the applicable jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of ICS and County shall be construed and enforced accordingly.
18. **Special ADA.** ICS will install Equipment in accordance with the Americans with Disabilities Act and any related federal, state and local regulations in effect at the time of installation. ICS shall make any alterations to the Equipment as necessary for its correct operation and/or compliance with applicable laws at no cost to County.

19. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF GOODWILL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR IN TORT OR WHETHER FROM BREACH OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. LIQUIDATED DAMAGES SHALL NOT APPLY UNLESS OTHERWISE EXPRESSLY PROVIDED FOR ELSEWHERE IN THIS AGREEMENT. COUNTY DOES NOT WAIVE AND INTENDS TO ASSERT ANY AND ALL AVAILABLE NRS CHAPTER 41 IMMUNITY IN ALL CASES.

20. **Warranty.** Subject to County's compliance with its obligations hereunder, Equipment shall be free from defects in workmanship and material, shall conform to ICS' published specifications in effect on the date of delivery or as otherwise proposed to County in writing, and shall not infringe any patent or trademark. This warranty shall continue while Equipment is in operation at each Location. County shall provide ICS with prompt written notification as to the specifics of any nonconformity or defect and ICS shall have a commercially reasonable timeframe to investigate such nonconformity or defect. As County's sole and exclusive remedy, ICS shall, at ICS' sole option and expense, either: (a) correct any nonconformities or defects which substantially impair the functionality of the Equipment in accordance with the aforesaid specifications; (b) use reasonable efforts to provide a work-around for any reproducible nonconformities or defects which substantially impair the functionality of the Equipment in accordance with the aforesaid specifications; (c) replace such nonconforming or defective Equipment; or (d) promptly refund any amounts paid to ICS by County with respect to such nonconforming or defective Equipment upon ICS receipt of such nonconforming or defective Equipment. ICS does not warrant that the operation of the Equipment shall be uninterrupted or error-free. No warranty is made with respect to the use of Equipment on or in connection with equipment or software not provided by ICS. Equipment may contain recycled, refurbished or remanufactured parts which are equivalent to new parts. ICS makes no warranties or representations that it will solve any problems or produce any specific results.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ICSOLUTIONS HEREBY DISCLAIMS ANY OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. THE FOREGOING SHALL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMING OR DEFECTIVE EQUIPMENT AND SERVICES. NOTHING CONTAINED HEREIN SHALL OBLIGATE ICS TO ENHANCE OR MODIFY THE SERVICES OR EQUIPMENT BEYOND THE SUBSTANTIAL FUNCTIONALITY INITIALLY ACCEPTED BY FACILITY, WHICH ACCEPTANCE SHALL BE DEEMED TO HAVE OCCURRED UPON THE GENERATION OF CALL REVENUE.

21. **No Hire/No Solicit.** During the term of this Agreement, and for a period of six (6) months thereafter, neither party shall solicit or hire the other party's employees, agents or representatives engaged by such party to perform work relating to this Agreement, without the express written consent of the other party.

22. **Confidentiality.** During the term of this Agreement, each party may disclose to the other certain proprietary information including, without limitation, trade secrets, know how, software, source code, techniques, future product plans, marketing plans, inventions, discoveries, improvements, financial data, business strategies and the terms of this Agreement (collectively, "Confidential Information") of a character identified by the disclosing party as confidential and that should reasonably have been understood by recipient, because of legends or markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing party. Each party and each of its employees or consultants to whom disclosure is made shall hold all Confidential Information in confidence, and shall not disclose such information to any third party or apply it to uses other than in

connection with the performance of this Agreement. Each party shall use the same degree of care that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable duty of care, to prevent the unauthorized use or disclosure of any Confidential Information. A recipient may not alter, decompile, disassemble, reverse engineer, or otherwise modify any Confidential Information received hereunder and the mingling of the Confidential Information with information of the recipient shall not affect the confidential nature or ownership of the same as provided hereunder. The obligations of this paragraph shall survive termination of this Agreement for a period of three (3) years.

This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the Confidential Information received hereunder which is: (a) now or hereafter, through no unauthorized act or failure to act on recipient's part, becomes generally known or available; (b) lawfully known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (c) hereafter lawfully furnished to the recipient by a third party without restriction on disclosure; or (d) independently developed by the recipient without use of the disclosing party's Confidential Information.

Nothing in this Agreement shall prevent the receiving party from disclosing Confidential Information to the extent the receiving party is legally compelled to do so by any governmental or judicial agency having jurisdiction.

Nothing in this Agreement shall prevent County from complying with NRS 239.010, under which information or documents may be open to public inspection and copying. County will have the duty to disclose particular information or documents, unless they are made confidential by law or a common law balancing of interest. County agrees that ICS and third-party software under paragraphs 23 and 24 of this Agreement shall be deemed a trade-secret and confidential. County also agrees that any documents clearly labeled as a "trade secret" or "confidential" under the preceding provisions of this paragraph 22 of this Agreement shall be deemed a trade-secret or confidential. ICS may otherwise clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061. ICS hereby agrees to indemnify and defend County for honoring the designation of ICS and third-party software, under paragraphs 23 and 24, or any documents under this paragraph 22, as "trade secret" or "confidential." The failure to label any document that is released by County as a trade secret or confidential, or the failure to indemnify or defend County against a lawsuit seeking disclosure of any document labeled trade secret or confidential, shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

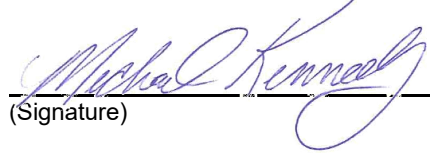
- 23. License to Use Software.** With respect to the Equipment provided under this Agreement, ICS hereby grants to County a nontransferable, nonexclusive license to install, store, load, execute, operate, utilize and display (collectively, "Use") the runtime versions of the Enforcer® software in performance of this Agreement including, where applicable to the purposes hereunder, such Use on computers owned by County. Such license is specific to the County and Location(s) for which the ICS Services are provided and may not be transferred other than through an authorized assignment of this Agreement. Upon the termination hereof, this license and all rights of County to Use the Enforcer® software will expire and terminate. County will not transform, decompile, reverse engineer, disassemble or in any way modify any of the Enforcer® software or otherwise determine or attempt to determine source code from executable code of any elements of the Enforcer® software.
- 24. Third-Party Software.** Third-party software licenses may be contained in certain software included with equipment and may therefore require a click-through acceptance by any users. Such software licenses are incorporated herein by reference and can be made available upon request.

- 25. Taxes.** Except as expressly provided for herein, each party shall bear responsibility for its own taxes and such other costs and expenses arising in connection with the performance of their respective obligations hereunder.
- 26. Insurance.** At all times during the Term of this Agreement, ICS shall maintain in effect the following types and amounts of insurance:
- a. General Liability Insurance: \$1,000,000 per occurrence; \$1,000,000 personal injury; \$2,000,000 general aggregate; \$2,000,000 products/completed operations.
 - b. Commercial Automobile Liability: \$1,000,000 Combined Single Limit.
 - c. Workers' Compensation: ICS shall comply with all workers' compensation requirements for the jurisdictions in which employees/representatives perform applicable duties.
- Company's general liability insurance policy must by endorsement name Carson City, Nevada, its officers, employees and immune contractors as additional insureds for all liability arising from this Agreement. ICS shall provide certificates evidencing the above coverage amounts upon request from County.
- 27. No Third-Party Beneficiary.** It is specifically agreed between the Parties that none of the provisions of this Agreement create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this Agreement any right to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.
- 28. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.
- 29. Application to Similar Parties.** The parties acknowledge that certain counties within the same State as County (each an "Affiliated County") may wish to obtain equipment and related services substantially similar to the Equipment and related services set forth herein. ICS may, at no cost or obligation to County, enter into a definitive agreement with an Affiliated County and incorporate the terms and conditions of this Agreement by reference.

{Remainder of page intentionally left blank. Signature page and Exhibits follow.}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the dates set forth below, and represent and warrant that they have full authority to execute this Agreement on behalf of their respective parties:

Inmate Calling Solutions, LLC


(Signature)

Michael Kennedy
(Printed Name)

Vice President Sales & Marketing
(Title)

4/6/2020
(Date)

Carson City

Kenneth Furlong, Sheriff

Date

Robert Crowell, Mayor

Date

Attest:

Aubrey Rowlett, Clerk-Recorder

Date

Approved as to form:

Deputy District Attorney

Date

Exhibit A – County Addresses

Principle Business Address (used for all notices hereunder):

Carson City Sheriff's Office
901 E. Musser Street
Carson City, Nevada 89701

Service Locations:

<u>Location Name</u>	<u>Address</u>
Carson City Jail	901 E. Musser Street Carson City, NV 89701

Equipment to be shipped to:

Carson City Sheriff's Office
901 E. Musser Street
Carson City, Nevada 89701

Commissions to be paid to:

Carson City Sheriff's Office
901 E. Musser Street
Carson City, Nevada 89701

Commissions mailed to:

Carson City Sheriff's Office
901 E. Musser Street
Carson City, Nevada 89701

Exhibit B – Equipment

Centralized Enforcer® Call Processing platform, including all equipment and features provided under the Prior agreement, along with the following:

- Refresh\Replace all inmate telephones as needed
- Add Casemaker Law Library
- Add 14 VVS Units (remote visitation feature not included)

Exhibit C – Call Rates

The following rates apply to all calls from Service Locations:

Prepaid, Debit & QwikCall Calling Rates	
<u>Call Type</u>	<u>Per Minute Charge</u>
Local	\$0.21
IntraLATA	\$0.21
Intrastate	\$0.21
Interstate	\$0.21
International (Debit Only)	\$0.99

Collect (Direct Bill) Calling Rates	
<u>Call Type</u>	<u>Per Minute Charge</u>
Local	\$0.25
IntraLATA	\$0.25
Intrastate	\$0.25
Interstate	\$0.25

NOTES: Domestic interstate rates apply for calls to U.S. territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico and U.S. Virgin Islands. All non-U.S. destinations are rated as international.

Call rates shown do not include local, county, state and federal taxes, regulatory fees and the following fees:

Non-Commissionable Billing Fees:

Payment Processing Fee (Live Agent)..... \$5.95
Payment Processing Fee (IVR, QwikCall or Internet)..... \$3.00

(All other fees free or waived)

Exhibit D – Commissions

ICS shall pay to County a Commission of 55% of the gross revenue for all call types generated from County's Service Locations.

Note: Commissions shall be made payable and sent to the address so designated on Exhibit A to this Agreement.