

ORIGINAL

PUBLIC COMMUNICATIONS SERVICES INMATE PHONE MANAGEMENT AGREEMENT

This Inmate Phone Management Agreement ("Agreement") is entered into effective May 15, 2003, by and between **PUBLIC COMMUNICATIONS SERVICES, INC. ("PCS")**, a California corporation, and **EL DORADO COUNTY SHERIFF'S OFFICE ("Client")**, as follows:

RECITALS

WHEREAS, the **Client** has the mandated responsibility to provide to the County's inmates in its custody reasonable access to phones, and:

WHEREAS, the **Client** is designated the sole authority over an "Inmate Welfare Fund" wherein funds from the use of the Inmate Phones are deposited, and:

WHEREAS, the **Client** through an Inmate Welfare Fund Committee, may enter into legal contracts for the provision of such Inmate Phone service, and:

WHEREAS, the **Client** through such Inmate Welfare Fund Committee is desirous of entering into a "management agreement" with **PCS** for management of the Inmate Phone system(s), and:

WHEREAS, **PCS** provides, among things, certain management services for Inmate Phones, and:

WHEREAS, **Client** desires that **PCS** provide the management services and other services set forth herein ("**Services**") on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants made herein the parties hereto agree as follows:

1. MANAGEMENT SERVICES

a. **PCS** will perform Inmate Phone management services to include the management of all activity between existing vendor and/or new vendors, management and coordination of additional moves and changes of Inmate Phones, provide **Client** a single point of contact for all Inmate Phone related matters, provide **Client** with **PCS'** standard management reports.

b. **PCS** will manage all existing and future Inmate Phones at **Client's** facility (the "Inmate Phones"). **PCS** may remove any existing Inmate Phones and as agreed by **Client**, may install new Inmate Phones as is reasonably required. **PCS** will be responsible for collecting all revenues generated from the operation of Inmate Phones, including but not limited to, coin revenue, collect calls and all other types of calls which are billable calls placed from Inmate Phones. Billable calls will include all local, IntraLATA, InterLATA and Interstate calls placed from Inmate Phones. Furthermore, **PCS** will collect, on behalf of **Client**, revenues on any future revenues derived from the phones, including but not limited to, any regulatory decision granting the right for additional compensation payable to Inmate Phones and/or other types of calls other than noted above, which become a billable form of calls placed from Inmate Phones.

c. PCS may use a subcontractor to provide Inmate Phone services and support upon express consent and approval of Client. PCS will provide Client with any subcontractor's repair procedures and guidelines. If a subcontractor is in breach of its duties, PCS may terminate the subcontractor's agreement. At PCS' and Client's discretion, if subcontractor is working in good faith to cure the breach, PCS may retain subcontractor. If subcontractor is unable or unwilling to cure the breach, PCS and Client may agree to 1) waive the breach or 2) terminate the subcontractor's agreement and hire another subcontractor under similar terms and conditions.

d. The respective LEC or other providers of service will be required to provide Inmate Phone service and support under the guidelines of PCS' escalation procedures.

e. PCS shall provide Client access to its web-based reporting system, SOPHIA, so that Client can view for each Inmate Phone the total gross revenue billed by source and amount, when provided by the providers of service. PCS will provide the calculation of the commission paid to Client.

f. All subcontractors must undergo a security check with Client, to have clearance to access facilities.

2. POWERS OF PCS

With regard to the Inmate Phone System:

a. The powers and authorities herein granted to PCS shall be specifically granted by Client.

b. PCS shall direct the management and business affairs of Client's Inmate Phones and shall supervise all phases of their operations. In the exercise of such direction, PCS shall have full authority to do all things necessary or desirable, which shall be mutually agreed by Client and PCS to conduct, modify, expand or diminish the operations of Client's Inmate Phones at any time, to request audits, collect revenues, negotiate provider contracts and with Client's prior approval to pursue appropriate legal means for collection of revenues.

c. PCS shall not enter into any agreement, or cancel or modify any agreement with any carrier without prior written consent of Client. Notwithstanding any provision to the contrary, PCS shall be an independent contractor. It shall not make any commitment or incur any charge or expense in the name of the Client.

d. PCS shall request all providers to establish calling rates consistent and compatible with industry standards and shall provide those to Client.

e. PCS and Client shall mutually agree to the designated person or persons to perform the management services hereunder.

f. In accord with the provisions of 2b, and at the Client's sole discretion, the Client may direct PCS to replace, procure, install and manage an improved or more technologically advanced system than that currently in place upon the expiration of the incumbent provider's contract, or sooner in the event of incumbent's breach or failure to deliver promised goods and/or services. In such case PCS shall procure and install such system in consultation with Client and by the presentation of equipment and services options and recommendations based on PCS' specialized knowledge of the inmate telephone industry. In such case PCS shall

assume full responsibility for uninterrupted services to Client, transition of systems and installation of new systems. These services shall be in addition to the other Management services specified herein and shall be at no additional costs to the Client and shall be considered an extension of services under this agreement.

3. COMPENSATION

PCS shall cause service provider to pay Client payments according to the attached Addendum A hereto and incorporated herein as though set forth in full. PCS' management fees are assessed as described in the attached Addendum A. It is recognized and agreed that if any of the conditions herein should change, the conditions of Addendum A, by mutual agreement, shall be amended.

4. TERM AND TERMINATION

a. This Agreement shall become effective upon mutual execution hereof ("Effective Date") and shall remain effective for five (5) years.

b. At any time and without cause, Client shall have the right, in its sole discretion, to terminate this Agreement by giving thirty (30) days written notice to PCS. In the event of such termination, Client shall pay PCS for services rendered to the date of termination.

c. In addition, should PCS fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Client may immediately terminate this Agreement by giving PCS written notice of such termination, stating the reason for termination. In such event, PCS shall be entitled to receive as full payment for all services rendered and expenses incurred hereunder.

d. In the event that legislation and/or telecommunications tariffs or federally mandated regulations create adverse conditions in which it is no longer financially viable for PCS to provide its services under this Agreement, then PCS, at its sole discretion, shall have the right to terminate this Agreement after giving Client one hundred eighty (180) days notice of termination.

5. INDEMNITY

a. Except as to rate related matters, PCS agrees to protect, defend, indemnify and hold Client, the County of El Dorado, and any of their officers, directors, agents, contractors and employees harmless from and against any and all loss, costs (including reasonable attorney's fees), damages, liabilities, claims, liens, demands or causes of action of every nature, including damage to property or injury or death to persons arising directly or indirectly out of or incident to or in connection with PCS' performance of its obligations under this Agreement.

b. Client agrees to indemnify and hold PCS harmless from all loss, costs (including reasonable attorney fees) and damages arising from any claims, suits or actions by third parties related to, (1) the termination of any Inmate Phone contract with any carrier or vendor other than PCS existing prior to the Effective Date of this Agreement, and (2) the removal of any Inmate Phone or line connection from Client's facility.

6. INSURANCE REQUIREMENTS

PCS shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of PCS as required by law in the State of California.

B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.

C. PCS shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

D. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

E. PCS agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, PCS agrees, to the extent possible, to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and PCS agrees that no work or services shall be performed prior to the giving of such approval. In the event PCS fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

F. The certificate of insurance must include the following provisions stating that:

1. The Insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

G. PCS' insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of PCS' insurance and shall not contribute with it.

H. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

J. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

K. The foregoing insurance requirements shall not limit PCS' obligation arising under this agreement.

L. In the event PCS cannot provide an occurrence policy, PCS shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

M. Certificate of insurance shall meet such additional standards as may be determined by Client either independently or in consultation with Risk Management, as essential for protection of the County. PCS' insurance obligations shall survive termination or expiration of this agreement as respects any occurrence during the contract period.

7. MAINTENANCE OF RECORDS, RIGHT TO AUDIT

PCS shall keep and maintain records reflecting its operations for Client, and shall permit Client to inspect during business hours, upon at least forty-eight (48) hours prior notice, PCS' books, accounts and records pertaining to its operations for Client which original records shall not be removed from PCS' office. All such records, books and accounts shall be available for audit by Client for a period of four (4) years after PCS' performance of this Agreement for Client and for so long thereafter as any question with respect thereto remains unresolved. If an audit reveals an error or discrepancy, such error shall be corrected by prompt payment of money shown to be due and owing within one (1) billing cycle.

8. NOTICES

Notices required by this Agreement may be personally delivered to PCS or Client or may be delivered by facsimile and first class mail postage prepaid, addressed to the appropriate address hereinafter set forth or to such other address as PCS and Client may hereafter designate by written notice. If delivered by facsimile and first class mail, delivery will be considered complete on the date of facsimile transmission.

PCS: PUBLIC COMMUNICATIONS SERVICES, INC.
11859 Wilshire Boulevard, Suite 600
Los Angeles, California 90025
Attn: Helen Douglas
Fax No.: (310) 473-4714

CLIENT: EL DORADO COUNTY SHERIFF'S OFFICE
300 Fair Lane
Placerville, CA 95667
Attn: Captain Bob Altmeyer
Fax: (530) 626-8091

9. **REPRESENTATIONS AND WARRANTIES OF PCS**

a. The parties intend that **PCS**, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. **PCS** is not to be considered an agent or employee of **Client** and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits **Client** provides its employees.

b. Each party agrees to file, as applicable, federal and state tax returns and pay all applicable taxes including sales tax on debit card sales on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Each party agrees to indemnify and hold the other harmless from any liability which it may incur to the United States or to the State of California as a consequence of its failure to pay, when due, all such taxes and obligations. In case a party is audited for compliance regarding any withholding or other applicable taxes, the other party agrees to furnish the other party proof of payment of taxes.

c. **PCS** shall comply with all applicable federal, state, and local laws, rules, and regulations in regards to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

10. **NO WAIVER OF BREACH**

The waiver of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

11. **NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12. **MISCELLANEOUS**

a. **Dispute Resolution** – Any controversy, claim or dispute between the Parties regarding any aspect of this Agreement or any act that allegedly has or would violate any provisions of this Agreement (“Arbitrable Dispute”) will be submitted to arbitration in **Client** County before an experienced arbitrator licensed to practice law in the State of California and selected from the American Arbitration Association or its successors panel of neutrals, as the exclusive and binding remedy for any such Arbitrable Dispute. Arbitration of Arbitrable Dispute shall be in accordance with the provisions of the rules and procedures of the American Arbitration Association in effect at the time of filing of the demand for arbitration, as amended and as augmented by this Agreement. Any party may bring an action in court to compel arbitration of this Agreement and to enforce an arbitration award. Otherwise, no party shall initiate or prosecute any lawsuit, appeal or administrative action in any way related to an Arbitrable Dispute. Each party shall be responsible for fifty percent (50%) of the arbitration fees. Notice of the demand for arbitration shall be served in writing by certified mail, return receipt requested upon the other parties to the arbitration demand and with the San Francisco Office of the American Arbitration Association. Should any party to this Agreement hereafter institute any legal action against the other with respect to any claim raised by this Agreement and/or pursue

any Arbitrable Dispute by any method other than said arbitration, the responding party shall be entitled to recover from the initiating party all damages, costs, expenses, and attorneys fees incurred as a result of such action.

b. Successors, Subsidiaries and Assigns – This Agreement shall bind and inure to the benefit of the principals, agents, representatives, subsidiaries, successors, heirs and assigns of the parties hereto.

c. Attorney's Fees to Enforce this Agreement – If any arbitration be instituted to enforce this Agreement, the party not prevailing shall pay to the prevailing party all costs and expenses, including reasonable attorneys fees, incurred by such prevailing party in connection with such arbitration.

d. Governing Law – This Agreement is made and entered into in this State of California, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California.

e. Severability – If any provision of this Agreement is declared by any proceeding to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, terms, or provisions shall be deemed not to be a part of this Agreement.

f. Entire Agreement – The parties acknowledge that no other person or any agent or attorney of any other individual or entity has made any promise, representation or warranty whatsoever, express, implied or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this instrument, and each signatory hereby acknowledges that it has not executed this instrument in reliance upon any such promise, representation or warranty. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations or agreements between the parties, either written or oral on the subject hereof. This Agreement may be amended only by a written instrument designated as an amendment to this Agreement and executed by the parties hereto.

g. Assignment – This Agreement shall be binding upon the parties and their respective successors, assigns and heirs.



Jeff Neves, Sheriff/Coroner

PUBLIC COMMUNICATIONS SERVICES, INC.

May 7, 2003
Date



Paul Jennings
Chief Executive Officer


EL DORADO COUNTY BOARD OF SUPERVISORS

May 13, 2003
Date



Helen Baumann, Chair
El Dorado County Board of Supervisors

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By 

DEPUTY 5-13-03

ADDENDUM A

1. **PCS** will be the single point of contact for **Client** pertaining to all issues related to the Inmate Phones and Inmate Phone equipment.
2. **PCS** will provision the Local, IntraLata and InterLata Inmate Phone service through **AT&T** ("**Provider**") and will utilize the existing customer premise equipment (Call Control) installed by with **Provider**. **PCS** will work to enhance all call reporting both from **Provider**, and will perform monthly audits to ensure all billable records are accessible. **PCS** will also work with **Provider** to bring more capabilities for **Client** to have on site.
3. Commissions for Local, IntraLata and InterLata calls to be paid to **Client** will be calculated on gross billable revenue, between **Provider** and **Client**. Gross billable revenue is defined as all gross Local, IntraLata and InterLata (0+) charges billed by **Provider** and any future revenue sources.
4. Upon the Effective Date of the Inmate Phone Management Agreement, **PCS** will charge a fee of five percent (5%) based on the gross billable monthly Local, IntraLata and InterLata charges from all revenue streams.
5. **PCS** will pay commissions to **Client**, as described in AT&T Commission Agreement, as amended, dated August 17, 1999 at forty percent (40%), (less management fee), of all gross billable Local, IntraLata and InterLata calls completed from **Provider's** Inmate Phones at **Client's** Facilities and carried by **Provider**. Commissions will be paid on a monthly basis, within thirty to forty-five (30 to 45) days after the close of the revenue month.
6. **PCS** will provide an escalation procedure attached hereto Exhibit A, which establishes priority levels of maintenance and repair services for service providers. **PCS'** failure to meet the repair deadlines for priority level repairs as set forth in the escalation procedures shall result in a fifty dollar (\$50) per day penalty being imposed upon **PCS** for every out of compliance event. Inmate Phone problems will be documented on an Inmate Phone trouble report form to be provided by **PCS**.
7. Notwithstanding any provision to the contrary, there shall be no drop in compensation below that received prior to the effective date of this Agreement.

SPECIAL POWER OF ATTORNEY

The EL DORADO COUNTY SHERIFF'S DEPARTMENT ("Client"), the undersigned, hereby makes, constitutes and appoints PUBLIC COMMUNICATIONS SERVICES, INC. ("PCS") as Client's true and lawful attorney in fact to act for Client, in Client's name, place and stead for the purpose of auditing Client's revenues received from telephone carriers. In this regard, Client hereby grants to PCS full power and authority to do and perform each and every act and thing which may be necessary or convenient in connection with the foregoing as fully, for all intents and purposes, as Client might or could do if personally present, hereby ratifying and confirming all that PCS shall lawfully do or cause to be done by the authority vested herein. The special power of attorney will terminate in concurrence with the termination of the Agreement between Client and PCS.

**EL DORADO COUNTY
BOARD OF SUPERVISORS**

May 13, 2003
Date


Helen Baumann, Chair
El Dorado County Board of Supervisors

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By Margaret E. Mood
DEPUTY

5-13-03

PUBLIC COMMUNICATIONS SERVICES INMATE PHONE REVENUE REVIEW AND RECOVERY AGREEMENT

PUBLIC COMMUNICATIONS SERVICES, INC. ("PCS"), a California Corporation, located at 11859 Wilshire Blvd., Suite 600, Los Angeles, California 90025 and **EL DORADO COUNTY SHERIFF'S OFFICE ("Client")**, located at 300 Fair Lane, Placerville, CA 95667 do hereby agree as follows:

RECITAL

1. **PCS** provides, among other things, telecommunications consulting services for businesses. In doing so, the consulting services provided are of value and therefore are provided for a fee.
2. **Client** has retained the consulting service of **PCS** for, among other things, reviewing **Client's revenue derived from its' Inmate Telephone services**.

NOW THEREFORE, in consideration of the mutual covenants made herein, the parties hereto agree as follows:

A. PROJECT

The project contemplated by the parties and evidenced by this Inmate Phone Review Agreement ("Agreement") will include the following **PCS** activities:

- i. **PCS** will review and verify existing Inmate Phone Providers (**Vendor's/Carrier's**) collections of **Client** from Vendor/Carrier pursuant to the contract (as hereafter defined). If it is determined **Client** is owed any material sum of money by any of its Carriers, **PCS** will assist in obtaining appropriate payments from said Vendors/Carriers.
- ii. Based upon management input of **Client** and **PCS'** experience and expertise in the Inmate Telephone industry, **PCS** will make recommendations for the operation of **Client's** Inmate Telephones. In this regard, with **Client's** approval, **PCS** will, when necessary, issue technical specifications to appropriate vendors for service and act as **Client's** agent in the management of all approved changes and reconfiguration of the Inmate Telephone network.
- iii. As necessary, **PCS** will provide additional reports to summarize savings and to recommend any additional changes that may be required.

B. FEE CHARGES AND PAYMENT SCHEDULES

- i. **PCS** shall undertake and complete the consulting services described herein above for thirty percent (30%) of the total revenues recovered by **PCS** from all providers.
- ii. Payments of **PCS'** fees described in Paragraph 2.B.i. hereof shall be due upon collection of recovered payments.

C. MISCELLANEOUS

- i. PCS and Client shall and do hereby agree that any information provided by Client to PCS and any information and recommendations provided by PCS to Client shall be held in the strictest confidence and shall not be communicated either orally or in writing to any third person except where required by law to be so communicated, except as required to perform its payment recovery duties as outlined in this Agreement.
- ii. PCS shall be held harmless by Client in so far as any relationship between the Client and any Carrier recommended by PCS.
- iii. The construction, interpretation and performance of this Agreement, and all transactions under it, shall be governed and executed in accord with the laws of the State of California.
- iv. This Agreement constitutes and appoints PCS as Client's agent for the purpose set forth herein and in the form as attached as Exhibit "A".
- v. In the event either party shall be in breach or default of any material terms, conditions or covenants of the Agreement and such breach shall continue for a period of thirty (30) days after the giving of written notice thereof to either party by the other, then in addition to all the rights to recover legal costs, reasonable expenses, and attorney's fees necessary to enforce this Agreement, the party not in default shall have the right to cancel this Agreement without charge or liability.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of this date set forth below:

Executed this 13th day of May, 2003.

EL DORADO COUNTY SHERIFF'S OFFICE

By: [Signature]
Jeff Neves, Sheriff/Coroner

PUBLIC COMMUNICATIONS SERVICES, INC.

By: [Signature]
Paul Jennings, Chief Executive Officer

EL DORADO COUNTY


By: [Signature]
Helen Baumann, Chair
El Dorado County Board of Supervisors

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By: [Signature]
DEPUTY 5-13-03

SPECIAL POWER OF ATTORNEY

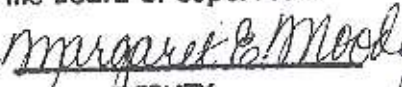
The El Dorado County Sheriff's Office ("Client"), the undersigned, hereby makes, constitutes and appoints PUBLIC COMMUNICATIONS SERVICES, INC. ("PCS") as Client's true and lawful attorney to act for Client, in Client's name, place and stead for the purpose of auditing Client's revenues received from telephone carriers. In this regard, Client hereby grants to PCS full power and authority to do and perform each and every act and thing which may be necessary or convenient in connection with the foregoing as fully, for all intents and purposes, as Client might or could do if personally present, hereby ratifying and confirming all that PCS shall lawfully do or cause to be done by the authority vested herein.


Jeff News, Sheriff/Coroner


HELEN K. BAUMANN, Chairman
El Dorado County Board of Supervisors

May 13, 2003
Date

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By 
DEPUTY
5-13-03