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**TULSA COUNTY**  

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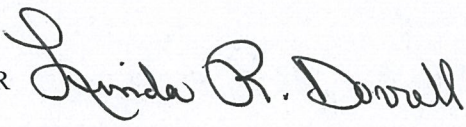
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**PURCHASING  
DEPARTMENT**

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# MEMO

DATE: AUGUST 31, 2016

FROM: LINDA R. DORRELL  
PURCHASING DIRECTOR 

TO: BOARD OF COUNTY COMMISSIONERS

SUBJECT: REVENUE SHARING AND SERVICE AGREEMENT- HOMEWAV, LLC

SUBMITTED FOR YOUR APPROVAL AND EXECUTION IS THE ATTACHED REVENUE SHARING AND SERVICE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS ON BEHALF OF THE TULSA COUNTY SHERIFF'S OFFICE AND HOMEWAV, LLC FOR THE INSTALLATION OF A FEE-BASED, INMATE VIDEO VISITATION SYSTEM.

RESPECTFULLY SUBMITTED FOR YOUR APPROVAL AND EXECUTION.

LRD/arh

ORIGINAL: PAT KEY, COUNTY CLERK, FOR THE SEPTEMBER 6, 2016 AGENDA.

COPIES: COMMISSIONER JOHN M. SMALIGO  
COMMISSIONER KAREN KEITH  
COMMISSIONER RON PETERS  
VIC REGALADO, SHERIFF  
MICHAEL WILLIS, CHIEF DEPUTY  
VICKI ADAMS, CHIEF DEPUTY





## REVENUE SHARE AND SERVICE AGREEMENT

BETWEEN HOMEWAV, LLC

AND

THE BOARD OF COUNTY COMMISSIONERS OF  
TULSA COUNTY, OKLAHOMA ON BEHALF OF THE  
TULSA COUNTY SHERIFF

This Agreement ("Agreement"), made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 between Tulsa County, OK, through its authorized representative (the "County") and HomeWAV, LLC, a Virginia limited liability company ("HomeWAV").

### RECITALS

**Whereas**, the County requested, and HomeWAV has submitted, a proposal for the installation of a fee-based, inmate video visitation system that consists of certain equipment ("Equipment") that will operate using HomeWAV's proprietary and patented software program (the "System");

**Whereas**, the System will be installed and operated in the County's detention facility (the "Facility") and will provide inmate video communications;

**Whereas**, HomeWAV will deliver and install the Equipment and provide the System, and the County accepts HomeWAV's Equipment and will make use of the System, pursuant to the terms set forth;

**Now, therefore** in consideration of the mutual covenants and promises contained herein, the parties, desiring to be contractually bound, agree as follows:

1. **Term of Agreement.** This Agreement shall continue for a one (1) year term ("Term") as dictated by Oklahoma law, commencing on July 1, 2016. This Agreement may be extended on such terms and conditions as the parties may mutually agree.

2. **License for Use of System.** HomeWAV hereby grants to the County a non-assignable license to use its System, at **no charge**, for the limited purpose of allowing the Equipment to provide video and voice communication services to inmates in the Facility pursuant to the terms of this Agreement.



3. **HomeWAV's Representations and Responsibilities.** HomeWAV will; (i) provide cloud-based storage for all call data for ninety (90) days and archived records for life of Agreement, (iii) and agree to HomeWAV's Software and Hardware Service Level Agreement (see Attachment A) for a one (1) year term Agreement.

4. **County's Representations and Responsibilities.** The County will; (i) agree that the HomeWAV system will be the exclusive video and voice communication provider to the inmates, (ii) agree, at its expense, to provide necessary jail management software data for integration with the System, (iii) agree to reasonably protect the Equipment against willful abuse and promptly report any damage, service failure or hazardous conditions to HomeWAV, and (iv) agree to a one (1) year term commencing on July 1, 2016.

5. **System Fees.** The Facility's inmates and visitors shall be charged a ("Usage Fee") to take part in using the System's services. HomeWAV reserves the right to adjust all Usage Fees without advanced approval from the County. The Usage Fee shall be deposited by the inmate's visitor directly into a dedicated account established and maintained by HomeWAV through PayPal™, or another equivalent third party ecommerce vendor. The inmate's visitor will be subject to transaction and refund fees. HomeWAV agrees that the Usage Fee will not exceed the maximum rates as authorized by the state's telecommunication regulatory authority and the Federal Communications Commission (FCC). Any rate changes mandated by the state/local regulatory authority and/or the FCC which adversely affect this Agreement shall entitle HomeWAV to, at its option, renegotiate or cancel this Agreement in accordance with Paragraph 14. Initial proposed fees will be the following:

Service	Fee	Notes
*Video Calls	\$0.50/minute	
*Messaging	\$1.00	60 Second Video
Transaction Fee	\$1.00	\$2.00 (effective 9/1/16)
Refund Fee	\$7.50	
*Denotes Usage Fee		

6. **Revenue Sharing** Revenues from video visitation usage of the Equipment and the System installed in the Facility will be shared between HomeWAV and the County. The County will receive **30%** of the Usage Fee revenues. HomeWAV shall pay to the County, on a monthly basis, its share of the revenues no later than the 10<sup>th</sup> of the following month. The County's share of Usage Fee revenue will be reduced by an amount equal to third party monthly charges for high speed Internet service to the Facility. In the event the County allows on-site free visitation, the free visitation will be tracked and charged against the County's share of revenue monthly.

7. **Financial Reporting Requirements.** HomeWAV shall maintain an accounting program that accurately reflects the revenues generated by the System and provide that information to County monthly, and more frequently on demand. HomeWAV shall issue usage



data, revenue, and expense information by the 10<sup>th</sup> day of each month with respect to the System activity that occurred in the Facility during the preceding month. HomeWAV shall maintain all books, documents, accounting records and other evidence pertaining to the services and payments under this Agreement and make such materials available for inspection at all reasonable times during the term of this Agreement, and for three (3) years after the date of the final payment under the Agreement. HomeWAV will provide monthly usage reports, to the County, at the following address:

David L. Moss Criminal Justice Center  
300 N. Denver Ave.  
Tulsa, OK 74103

8. **Indemnification.** HomeWAV will indemnify the County, its officers, agents and employees from all suits, claims, actions or damages of any nature brought due to the breach of this Agreement by HomeWAV, its subcontractors, agents or employees or due to any negligent act of HomeWAV, its subcontractors, agents or employees.

9. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the State of Oklahoma, both as to interpretation and performance. The Court of Tulsa County, Oklahoma shall have exclusive jurisdiction and venue over any disputes which arise between the parties hereunder.

10. **Limitations of liability.** In no event shall County or HomeWAV be liable for any indirect, incidental, consequential, special or exemplary damages or lost profits.

11. **Nondiscrimination and non-conflict statements.** HomeWAV agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of HomeWAV. HomeWAV shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

12. **Compliance with all federal, state, and municipal laws.** HomeWAV is familiar with, and agrees to observe and comply with, all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of inmate video communication, and shall ensure that its third party subcontract installers obtain any necessary permits prior to installation of the Equipment in the Facility.

13. **Force majeure.** Neither party shall be responsible or liable for delays or inability to act or perform their obligations due to circumstances beyond their reasonable control, including, but not limited to, acts of God, fire, flood, storm, theft of equipment, or changes in regulatory rules or regulations. This Agreement is subject to termination by either party upon



sixty (60) days' written notice should there be imposed upon either party any rule or regulation by any state, federal or local regulatory which would substantially adversely affect the operation of the Equipment and/or System provided hereunder.

14. **Severability clause.** If any provision of this Agreement is declared illegal, void, or unenforceable the remaining provisions shall not be affected but shall remain in force and in effect.

**In witness whereof,** the parties hereto have caused this Agreement to be executed in one original copy on the day and year first above written.

HomeWAV, LLC

John Best 8-5-16

Authorized Signature/Date

JOHN BEST PRESIDENT

Print Name/Title

Board of County Commissioners  
Tulsa County, OK on behalf of the Sheriff

\_\_\_\_\_  
Authorized Signature/Date

\_\_\_\_\_  
Print Name/Title

Maly M  
APPROVED AS TO FORM  
ASSISTANT DISTRICT ATTORNEY



## Attachment A – HomeWAV's Software and Hardware Service Level Agreement

### Support and Maintenance

- Support and maintenance will be provided by phone, remote and on-site.
- Phone support is available (24) hours a day, (7) days a week, and (365) days a year.
- Maintenance/repair calls from the facility will be resolved in the manner outlined in this section:
  - "Major Emergency" shall be defined as an occurrence of any one of the following conditions:
    - A failure of the system processor, its common equipment or power supplies which render the system incapable of performing its normal functions;
    - A failure of the recording function or any of its components that affects the full recording operation;
    - A failure of 30% or more of the kiosks at any one area within the facility;
    - A failure of any of the kiosks functions that result in the ability of inmates to place visitation sessions without the use of assigned PINs;
    - A failure of the system "kill switches" or similar disabling function.

For a "Major Emergency", HomeWAV will respond to the service problem within thirty (30) minutes of initial trouble report by the facility through the use of remote testing or access. If the system is not accessible for remote access, HomeWAV will have a qualified technician on site at the location within twenty-four (24) hours from the time of initial trouble report.

- "Routine Service" shall be defined as a system failure or problem other than a "Major Emergency" item as listed above.

For a "Routine Service" the HomeWAV will respond to the service problem within four (4) hours of the initial trouble report by the facility through the use of remote testing or access. Should the system not be accessible for remote access, HomeWAV will have a qualified technician on site at the facility within twenty-four (24) business hours from the time of initial trouble report.

Business hours are defined as 8:00a.m.-6:00p.m., Monday through Friday.

### Warranty

- HomeWAV Software Warranty – Includes support, maintenance, scheduled upgrades and scheduled updates.
- HomeWAV Hardware Warranty – Includes parts and equipment, on-site maintenance for normal wear, defects in materials and workmanship. (Does not include damage due to user neglect)



### Service Ticket Process

- A service ticket is created for the issue/defect and sent to our product development team.
- Our product development team will take the issue/defect and have it documented for analysis.
- Once analyzed, a simple 1-10 scale (10 highest) is used to prioritize and a number is placed on the issue/defect. A combination of importance, cost effectiveness and resolution time will determine the number.
- This service ticket is then placed on the revolving "to do" list for our programmers who deploy the fixes based on priority.
- Issues and defects are defined as common "bug" fixes to current versions of software.

### Request for Product Enhancement (Upgrade) Process

- The staff fills out a work order request for upgrade.
- The work order request is analyzed by the product development team to determine whether it is a necessary universal upgrade to system or specific to the County.
- If it is determined to be a necessary universal upgrade, it will be sent through the service ticket process and developed at no charge to the County. If it is determined to be specific to the County, a quote will be presented to the county for approval.
- If the work order request is approved by the County, the work order request will be sent to the service ticket process.

**In witness whereof**, the parties hereto have caused this Agreement to be executed in one original copy on the day and year first above written.

HomeWAV, LLC

John Best 8.5.16

Authorized Signature/Date

JOHN BEST President

Print Name/Title

Board of County Commissioners

Tulsa County, OK on behalf of the Sheriff

\_\_\_\_\_  
Authorized Signature/Date

\_\_\_\_\_  
Print Name/Title

Matthew M.  
APPROVED AS TO FORM  
ASSISTANT DISTRICT ATTORNEY