

May 25, 2005

TO: John Szerlag, City Manager

FROM: Charles T. Craft, Chief of Police
Gary Mayer, Support Services Captain

SUBJECT: Agenda Item - Inmate Telephone Agreement

RECOMMENDATION:

The Police Department recommends that the City enter into a renegotiated Inmate Telephone Agreement with Michigan Paytel, Inc. The agreement will give Paytel the exclusive rights to install and operate telephones for inmate use within the Police Department Lockup facility. The City will receive a 40% commission on the monthly fees collected by Paytel from the inmate telephones. The agreement will be for 6 years. It will renew for successive like periods, unless the Police Department provides written notice to Paytel at least 90 days in advance of the end of a 6-year term of its intent to terminate the agreement.

The Police Department receives 20% commission from Paytel through the current contract. Commission amounts vary from month to month based upon telephone usage. The Police Department does not pay anything for the telephones or service. The new agreement will increase revenue from commission by 100%.

The Police Department believes that Paytel is the sole source provider for the hardware and online tracking software available through this agreement. Paytel has already installed 8 hands free flush mount speakerphones in the Lockup holding cells as a result of its current agreement with the City.

BACKGROUND:

The City of Troy entered into an Inmate Telephone Agreement with Michigan Paytel, Inc. on July 5, 1995. The original agreement automatically renews itself every 4 years and is currently in effect. It gives Paytel exclusive rights to install and operate telephones for inmate use in the Lockup holding cells. It also gives the Police Department 20% commission of net monthly fees collected by Paytel as reimbursement of expenses for oversight. The Police Department can terminate the agreement, if it notifies Paytel in writing at least 90 days in advance of the end of a 4-year term of the contract.

Reviewed as to form and legality: _____
Lori Grigg Bluhm, City Attorney Date

INMATE TELEPHONE AGREEMENT

This Agreement is made this day of _____, 2005, between MICHIGAN PAYTEL, INC., (Paytel), a Michigan corporation, whose address is 30800 Telegraph Road, Suite 2930, Bingham Farms, Michigan 48025, and the Troy Police Department, whose address is 500 West Big Beaver, Troy, MI 48084 (Customer), agree as follows:

1. **License to Install Telephones.** Customer grants Paytel for the term of this Agreement the exclusive right to install and operate telephones for inmate use and to act as Customer's limited agent for telephone services for said telephones. Customer appoints Paytel as its limited agent to deal with the local telephone company with respect to all matters relating to the installation, maintenance and repair only of the inmate telephones lines.

2. **Prohibition on Other Installations** Customer agrees to prohibit the installation of any other inmate telephones for the term of this Agreement and any renewals. Customer shall not install or permit installation or use of any inmate telephones or similar equipment in the holding cells of the Customer by anyone other than Paytel during the term of this Agreement.

3. **Payment of Commissions.** Customer will receive a monthly commission of forty (40%) percent on the monthly fees collected by Paytel from the inmate telephones while they are in place on the Customer's premises as reimbursement of Customer's expenses for oversight. Payments shall be made to Customer by the 45th day following the end of the month for which service has been provided. Upon request by the Customer, Paytel shall make available for inspection and copying records relating to the computation of the commissions due Customer.

4. **Term of Agreement.** Subject to the termination provisions below, the term of this Agreement is for a period of six (6) years commencing with Paytel's acceptance. This Agreement shall renew for successive like periods unless Paytel receives written notice, by certified mail and return receipt requested, at least ninety (90) days prior to the expiration of the term that Customer wishes to terminate this Agreement. Paytel shall be responsible for removal of all equipment at its sole expense at the end of the term.

5. **Installation and Maintenance of Equipment.** Paytel shall maintain the inmate telephones in good working order at no cost to the Customer. Paytel shall have reasonable access to the premises during normal business hours to install, inspect and repair the inmate telephones. Customer shall make reasonable efforts to prohibit persons from

opening, adjusting, removing, disconnecting, repairing, replacing, or altering the inmate telephones in any way. The telephones are and will remain the sole property of Paytel.

6. **Default; Termination; Removal of Equipment.** If Paytel defaults in performance of its payment obligations or its maintenance and service obligations under paragraph 5, and such default remains uncured for thirty (30) days (unless such cure period is extended an additional time period not exceeding thirty (30) days), then Customer shall have the right to terminate this Agreement by giving written notice of such intention to Paytel. With respect to defaults other than defaults by Paytel in its payment obligations or maintenance and service obligations, the non-defaulting party shall have the right to declare this Agreement terminated and expired if the defaulting party fails to cure the default within forty-five (45) days after written notice of such default is given to the defaulting party. In such case, Paytel shall immediately arrange for the removal of its telephones at its sole expense and shall restore Customer's property to substantially the same condition as existed prior to the installation of such telephones.

7. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. Paytel shall give the Customer written notice of any assignment of the Agreement. Customer shall have the right to approve the assignment of the Agreement by Paytel. If Customer does not approve of the assignment of the Agreement by Paytel, the Customer may terminate the Agreement by written notice sent within ninety (90) days after Paytel's written notice of assignment.

8. **Protection of Equipment.** Customer shall be responsible for taking reasonable precautions (a) to protect Paytel's property from damage, vandalism, theft or hazardous conditions and reporting any service failures to Paytel and (b) prohibit any person (other than employees, contractors, or agents of Paytel) from connecting, disconnecting, moving or altering any of Paytel's public telephone equipment.

9. **Authority.** Each party represents that it has the authority to enter into this Agreement and the persons signing this Agreement on behalf of a party represents that he or she has been properly authorized and empowered to enter into this Agreement.

10. **Hold Harmless.** To the fullest extent permitted by law, Paytel agrees to defend, pay on behalf of, and hold harmless the Customer, its elected and appointed officials, all employees and volunteers working on behalf of the

Customer, its boards, commissions, and/or authorities, including employees and volunteers thereof, against any and all claims, demands, suits, or loss, including all costs and attorney fees connected therewith, for any damages which may be asserted or recovered against or from the Customer, its elected and appointed officials, its employees or volunteers, working on behalf of the Customer, its boards and/or authorities, including employees and volunteers thereof, by reason of personal injury, including bodily injury, death and or property damage including loss of use thereof, which arise out of or in connection with the operations or acts of commission or omission by Paytel under this Agreement, including, but not limited to any acts by its officers, agents, employees, workmen or independent contractors, whether arising in whole or in part from such operations or acts.

11. **Insurance Requirements.** Paytel shall procure and maintain insurance with the Customer named as an additional insured with the following language: "As respects Comprehensive General Liability Insurance, it is understood and agreed that the following shall be additional insureds: Customer, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, all board members, employees and volunteers. This coverage shall be primary to the additional insureds, and not contributing with any other insurance or similar protection available to the additional insureds, whether said other available coverage be primary, contributing or excess." Thirty (30) days advance written notice of insurance cancellation, non-renewal, and/or material change in coverage, will be provided to the Customer. The limits of Liability shall be no less than One Million Dollars (\$1,000,000.00) per occurrence, and/or aggregate combines single limited for Personal Injury, Bodily Injury and Property Damage.

12. **Conflict of Interest.** Subsequent to entering into this Agreement, if any City official, his or her spouse, child or parent shall become directly or indirectly interested in this Agreement, the Customer shall have the right to terminate this Agreement without further liability if the disqualification has not been removed within thirty (30) days after the Customer has given notification to the disqualifying interests. The City official shall have no vote on any issue involving the Agreement during said thirty (30) days period.

13. **Non-Discrimination.** Paytel shall, when applicable, comply with the requirements of all Federal, State and local laws and ordinances and regulations relating to minimum wages, social security, unemployment compensation insurance,

and Worker's Compensation, and shall not discriminate against any employee or applicant for employment because of race, sex, creed, color or national origin.

14. **Insolvency; Bankruptcy; Termination.** If either party shall cease conducting business in the normal course, become insolvent, make any assignment of its business for the benefit of creditors, suffer or permit the appointment of a receiver or similar officer for its business or assets, or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other state relating to insolvency or the protection of rights of creditors, and such condition is not remedied within thirty (30) days after written notice being given by the other party, that other party shall have the right to terminate this Agreement forthwith.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between Customer and Paytel and may not be modified or amended other than by a written agreement by both parties.

WITNESSES: **MICHIGAN PAYTEL, INC.**
a Michigan corporation
(Paytel)

By: DOUGLAS SAROKI
Its: President

WITNESSES: **Troy Police Department**
(Customer)

By:
Its: