



## REQUEST FOR BOARD ACTION

ITEM NO. 8.

**DATE OF MEETING:** May 16, 2011

**REQUESTED BY:** Carson Smith, Sheriff

**SHORT TITLE:** Resolution Authorizing Execution of Contract: Tarheel Monitoring for Operation of Court-Ordered Pretrial Release Program for the Pender County Jail

**BACKGROUND:** In an effort to reduce costs associated with jail overcrowding, we will contract with Tarheel Monitoring to start a Pretrial Release Program. Inmates who meet the criteria for pretrial release will be presented to the court with a recommendation that the court order them into the Pretrial Release Program. At this point, GPS tracking equipment will be attached to them and their movement will be tracked by Tarheel Monitoring until their case is adjudicated or until they are removed from the program. The cost of the monitoring is \$12 per inmate, per day. This is much less costly than sending inmates to other jails which we currently contract for \$50 per inmate, per day. Only some inmates will qualify and we will limit the number that will be in the program. This service is in use in New Hanover County and has been approved by the Fifth Judicial District.

**SPECIFIC ACTION REQUESTED:** The Board of Commissioners is requested to authorize execution of a contract with Tarheel Monitoring for operating a pretrial release program for Pender County.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

RB  
Initial

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the execution of the attached contract between Pender County and Tarheel Monitoring, LLC for a Pretrial Release Program for inmates in the Pender County Jail is authorized.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ Tate \_\_\_ Rivenbark \_\_\_ Ward \_\_\_ Williams \_\_\_

\_\_\_\_\_  
George R. Brown, Chairman      05/16/2011  
Date

\_\_\_\_\_  
ATTEST      05/16/2011  
Date

PENDER COUNTY CONTRACT # 11-\_\_\_\_\_

State of North Carolina

AGREEMENT

Pender County

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Pender County, North Carolina (the "County"), party of the first part; and, Tarheel Monitoring, LLC (the "Provider"), party of the second part;

WITNESSETH

For the purpose and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the services of the Provider, and the Provider agrees to provide the services to the County in accordance with the terms of this agreement.

**I. PROVIDER RESPONSIBILITIES**

- A. The services to be performed by the Provider shall be electronic monitoring of criminal defendants.
- B. To comply with all applicable rules, regulations, standards, policies, procedures and guidelines established by the Federal Government, State of North Carolina, and Pender County.
- C. To manage and operate an electronic monitoring and community supervision program for all of the County's court-ordered pretrial release detainees and "non-payment" child support detainees that would, in either case, otherwise require detention in a Pender County-owned detention facility. Unless otherwise agreed to, the technology configuration will include all necessary cellular-based, standard radio frequency, and GPS electronic monitoring units needed for the participating slots.
- D. To develop and coordinate operational procedures and activities with the County Pretrial Release Program staff, as well as any other officials mutually agreed upon by the County and Provider. In addition, staff will be provided on a part-time basis in order to directly assist County Pretrial Release Program staff with Court-related duties.
- E. To make available to the County copies of any agreements related to the subcontracting of any procedural and/or programmatic tasks.
- F. To provide the County with detailed monthly programmatic status reports based on performance and outcome measures established jointly and cooperatively by the Provider and the County.
- G. To maintain comprehensive program compliance information on each program participant and to provide said information as may be required by the Courts.
- H. To maintain an inventory of all fixed assets related to the EM Program.

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**II. COUNTY PAYMENTS**

In order to provide the necessary program infrastructure and responsiveness, the County agrees to pay the Provider for Provider's services rendered on a monthly basis at the rate of \$12.00 per day for GPS Monitoring Services and \$11.64 per day for RF Monitoring or Cellular-based Monitoring Services for each EM Program participant for which the Provider is providing monitoring services to the County. The County acknowledges and agrees that there are two (2) areas in the County that do not presently have adequate cellular service by which Provider can reliably provide monitoring services without the criminal defendant/offender possessing a "hard" telephone line or home telephone. The County understands and agrees that for criminal defendants/offenders residing in said areas of the County, for said criminal defendants/offenders to be effectively monitored by Provider they must possess and utilize a "hard" telephone line or home telephone at the residence of the criminal defendants/offenders in said two (2) areas of the County. For purposes of this section, the following illustrations apply to GPS Monitoring expenses and RF Monitoring expenses:

**GPS Illustration 1:** EM Program Participant can pay all of Provider's private \$15.00 daily GPS charge rate directly to Provider. In this instance, the County will not have to pay for any of Provider's monitoring of said EM Program Participant.

**GPS Illustration 2:** EM Program Participant can pay \$2.00 per day of Provider's private \$15.00 daily GPS charge rate directly to Provider. In this instance, the County's fee to be paid to Provider will be reduced from \$12.00 to \$11.64 per day for this EM Program Participant, and Provider will retain the additional \$1.64 being paid by this EM Program Participant.

**GPS Illustration 3:** EM Program Participant can pay \$8.00 per day of Provider's private \$15.00 daily GPS charge rate directly to Provider. In this instance, the County's fee to be paid to Provider will be reduced to \$7.00 per day for this EM Program Participant, and Provider will retain the \$8.00 being paid by this EM Program Participant.

**GPS Illustration 4:** EM Program Participant cannot pay any of Provider's private \$15.00 daily GPS charge rate. In this instance, the County will pay Provider the sum of \$12.00 per day for GPS monitoring of this EM Program Participant.

**RF Illustration:** Provider's charge to County for RF Monitoring of EM Program Participants will be \$11.64 per day for each EM Program Participant on RF monitoring. GPS Illustrations 1-3 above will apply in similar fashion for RF Monitoring services by Provider.

A. Under this Agreement, the County only pays for the EM Program Participants actually participating in the County's EM Program. Thus, the County shall not be required to pay any "minimum" amount to Provider based on a pre-determined "base number" of EM Program participant slots. There shall be no cap on the number of EM Program Participants the County may request of Provider to monitor.

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B. The Provider may seek to collect up to \$1.25 per day from employed program participants during their enrollment. Notwithstanding this provision, the Provider understands and agrees that: a) it is solely responsible for providing each participant with advance notification of this condition; b) it is solely responsible for collecting said payments; c) no participants will be cited to Court based solely on nonpayment of this fee; and d) program participants charged with non-support of their child are automatically excluded from this consideration.

**III. TERM**

A. The services of the Provider shall begin on \_\_\_\_\_, 2011, and unless sooner terminated by mutual consent, shall be provided until \_\_\_\_\_, 2014.

B. Renewal Option: By mutual consent and written notification, the parties may extend this Agreement for any additional period under the same or amended terms. Notwithstanding this statement, if the renewal option is exercised at the same service levels, then the percentage increase in contractual costs to the County shall not exceed the percentage rate computed based on the general CPI-U (Consumer Price Index — All Urban Consumers), Series ID: CUUR0000SAO, Not seasonally Adjusted, U.S. City Average, All items. This report is listed by the U.S. Department of Labor's Bureau of Labor Statistics on its website [www.data.bls.gov](http://www.data.bls.gov). The maximum potential percentage increase for a renewal will be calculated based using the annual amounts from the previous two Calendar years. Maximum potential percentage increase shall be computed as shown in the example below:

**FOR ILLUSTRATION PURPOSES**  
For a contract ending June 30, 2008.

CPI for 2007 (from table)	207.3
Less CPI for 2006 (from table)	201.6
Equals index point change	5.7
Divided by previous CPI	5.7/ 201.6
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percentage change	2.83%

C. At any time after \_\_\_\_\_, 2011, the Provider shall have the right to terminate this Agreement for services upon ninety (90) days notice in writing to the County, and the County shall also have the right to terminate this Agreement upon ninety (90) days notice in writing to the Provider. Early termination shall result in a pro rata payment of services provided through the date of termination.

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**IV. RELATIONSHIP OF PARTIES**

The Provider is an independent contractor of the County. It is further agreed by the Provider that it and its officers, employees, subcontractors, and agents shall obey all State and Federal Statutes, rules and regulations which are applicable to the operation of the program referred to herein. The officers, employees, subcontractors, and agents of the Provider are not officers, employees, subcontractors, or agents of the County.

**V. COMMUNICATION BETWEEN PARTIES**

The County's designated representative for contract monitoring and daily contract operational issues is \_\_\_\_\_. The Contract shall communicate all contract related issues, verbal or written, through the Pretrial Release Coordinator. Written communication shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**VI. INDEMNIFICATION**

To the extent permitted by law, the Provider and the County mutually agree to indemnify, and hold harmless each other from all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or property damage caused in whole or in part by the negligence or misconduct of the other agency or its subcontractors, agents and employees, except to the extent same are caused by negligence or willful misconduct.

The Provider shall maintain, at its expense, the following minimum insurance coverage:

- \$ 1,000,000 per occurrence /\$2,000,000 annual aggregate -- Commercial General Liability and Professional Liability
- \$ 100,000 per accident /\$500,000 policy limit --- Workers Compensation

The Provider agrees to furnish County proof of compliance with the insurance coverage requirements of this contract upon request. Provider upon request by County shall furnish a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to County verifying the existence of any insurance coverage required by County. The certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

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**VII. NON-ASSIGNMENT**

The Provider shall not assign this Agreement, including rights, to any other party without the prior written consent of the County.

**VIII. ENTIRE AGREEMENT**

The Provider and the County agree that this document constitutes the entire agreement between the two parties and may only be modified by written mutual agreement signed by the parties. Said modification may include a simple, duly authorized written amendment of this agreement.

**IX. GOVERNING LAW**

Both parties agree that this Agreement shall be governed by the laws of the State of North Carolina.

**X. WAIVER**

Failure of the County to enforce, at any time, any of the provisions of this Agreement, or to request at any time performance by Provider of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the County to enforce each and every provision.

IN WITNESS WHEREOF the County and the Provider have set their hands and seals as of the day and year first written.

[SEAL]

**PENDER COUNTY**

\_\_\_\_\_  
\_\_\_\_\_, County Manager

ATTEST:

\_\_\_\_\_  
Clerk to the Board

**TARHEEL MONITORING, LLC**

\_\_\_\_\_  
**Larry A. Powell, Manager-Member**  
Tarheel Monitoring, LLC  
244 Princess Street, Suite 1  
Wilmington, NC 28401

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This instrument has been pre-Audited in the manner required by The Local Government Budget and Fiscal Control Act.

Approved as to form:

\_\_\_\_\_  
County Finance Officer

\_\_\_\_\_  
County Attorney

NORTH CAROLINA

PENDER COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_ personally, came before me this day and acknowledged that he/she is Clerk to the Board of County Commissioners of Pender County, and that by authority given as the act of the Board, the foregoing instrument was signed in its name by its Manager, sealed with its official seal and attested by himself/herself as its Clerk.

WITNESS my hand and official seal, this \_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that Larry A. Powell, Manager-Member of Tarheel Monitoring, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this \_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_