

STAFF REPORT

SUBJECT: Highway Call Box Program: Maintenance Agreement

MEETING DATE: June 19, 2008

AGENDA ITEM: 6J

STAFF CONTACT: Brittany Odermann

RECOMMENDATION

Approve a consent agreement to transfer the call box maintenance contract with Comarco Wireless Technologies, Inc. to CASE Systems, Inc. resulting from Comarco's sale of their call box business.

SUMMARY

Comarco Wireless Technologies is currently under contract to SBCAG for maintenance of the highway call boxes. The maintenance contract covers preventative and corrective maintenance for call boxes and other repairs including removals and replacements. Comarco has sold its call box business and CASE Systems, Inc. will be the new owner beginning on June 15, 2008. Staff recommends that SBCAG assign the current one-year maintenance contract with Comarco Wireless Technologies to CASE Systems, Inc.

DISCUSSION

The current call box maintenance contract with Comarco Wireless Technologies will expire on April 1, 2009. SBCAG staff was recently informed that a new company, CASE Systems, Inc., will acquire the Comarco Wireless Technologies call box division. The transition is expected to take place on June 15, 2008. CASE Systems, Inc. and Comarco Wireless Technologies have requested that SAFE programs currently under contract with Comarco Wireless Technologies for call box maintenance consent to a transfer of the contract to CASE Systems, Inc. Similarly, it is the intent of CASE Systems, Inc. to honor all of Comarco Wireless Technologies' existing responsibilities and obligations (Attachment 1), including the contract with SBCAG for maintenance of highway call boxes. After acquiring the Comarco Wireless Technologies call box division, CASE Systems, Inc. will own the cellular telephone call box patents currently owned by Comarco Wireless Technologies. This will make CASE Systems, Inc. virtually the only company with whom the SBCAG can contract for call box installation and maintenance. CASE Systems, Inc. is a privately held company owned by Sebastian Gutierrez, the prior Vice-President of the Comarco Wireless Technologies call box division. CASE Systems, Inc. was set-up for the purpose of acquiring and operating the call box business currently owned by Comarco Wireless Technologies. Mr. Gutierrez has been with the Comarco Wireless Technologies call box division since 1996 and has been responsible for projects related to call boxes. CASE Systems, Inc. is expected to have 30 employees, all of whom are currently Comarco Wireless Technologies employees working in the call box division. The Comarco

Wireless Technologies employees currently responsible for the Santa Barbara County call box system, including the contract manager, the regional supervisor and the primary field technician, will become CASE Systems, Inc. employees. The CASE Systems, Inc. headquarters is located in Irvine, California.

Recommendation

Staff recommends that SBCAG authorize the Executive Director to sign the consent agreement (Attachment 2) to assign the current one-year call box maintenance contract with Comarco Wireless Technologies to CASE Systems, Inc. along with all of its existing responsibilities and obligations.

ATTACHMENTS:

Attachment 1: Letter from CASE Systems Inc. Requesting Assignment of the Current Comarco Wireless Technologies Santa Barbara County Call Box Maintenance Contract.

Attachment 2: Consent to Assignment and Assumption of Call Box Agreement assigning Comarco Wireless Technologies Santa Barbara County Call Box Maintenance Contract to CASE Systems Inc.

CASE Systems, Inc.

18 Morgan
Irvine, CA 92618

Ms. Brittany Odermann
Santa Barbara SAFE
260 N. San Antonio Rd. Ste. B
Santa Barbara, CA. 93110

May 23, 2008

Dear Brittany:

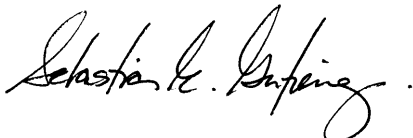
Per our conversation a week or so ago, I have compiled this letter to explain the changes in the call box organization and to request the assignment of the your maintenance agreement. I hope that this letter and attachments meet your needs for assigning the contract to CASE Systems, Inc.

CASE Systems, Inc. (CASE), a privately held company solely owned by me, has agreed to acquire the Call Box Business in its entirety from Comarco Wireless Technologies. As a result of this acquisition we, Comarco and CASE, in accordance with the current Maintenance Agreement, would like to request your written consent to assign the Call Box Maintenance Agreement – I am attaching a formal assignment agreement for your review and signature. I am also attaching a letter from Comarco whereby they indicate their formal acceptance of my offer and their commitment to support me in the transition.

It is my intent to maintain and improve on the service levels that we have provided our customers for many years. In order to do this and to make the transition as smooth as possible I am hiring all call box personnel currently working on your contract, in particular key personnel such as Anthony Potesanos and Roger Baden will be joining the new organization – see attached organization chart. I am also requesting that PAR Enterprises continue acting as our subcontractor for your project. Moreover, we are requesting an assignment of the current contract **as is** without any changes. CASE will live up to all of the requirements of the contract as if CASE were the original contractor. Lastly I will forward you tax and insurance documents under separate cover in the coming days.

I have personally enjoyed working with you and the other SAFE managers and look forward to building on our current relationship. Should you have any questions please do not hesitate to call me.

Best regards,



Sebastian E. Gutierrez
President
CASE Systems, Inc.

Attachments

Cc Chrisann Lawson

CONSENT TO ASSIGNMENT AND ASSUMPTION OF CALL BOX AGREEMENT

This Consent to Assignment and Assumption of Call Box Agreement (this "Agreement") is made and entered into as of June 15, 2008, by and among Comarco Wireless Technologies, Inc. ("Assignor"), Case Systems, Inc. ("Assignee"), and Santa Barbara County Service Authority for Freeway Emergencies ("Customer").

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement, dated as of May 8, 2008 (the "Purchase Agreement"), pursuant to which Assignee will acquire all of the Call Box-related assets of Assignor; and

WHEREAS, Assignor is the Contractor under a Call Box System Agreement originally dated March 1, 2007 (the "Call Box Agreement") and any amendments thereto by and between Assignor and Customer executed with respect to Customer's Call Box System; and WHEREAS, pursuant to the Purchase Agreement, Assignor agrees to assign its interest in the Call Box Agreement to Assignee, and, as set forth herein, Assignee agrees to assume all of the obligations of Assignor under the Call Box Agreement; and

WHEREAS, Customer's consent is required for this assignment.

1. Assignment and Assumption. Effective as of the closing date of the Purchase Agreement (the "Closing Date"), Assignor hereby grants, transfers, assigns and delegates to Assignee all of its right, title and interest and obligations of Assignor under the Call Box Agreement, and Assignee accepts such assignment and delegation above, assumes the Call Box Agreement, agrees to provide all services required under the Call Box Agreement from and after the Closing Date and agrees to observe and perform directly to Customer, all of the other covenants, agreements and obligations to be observed and/or performed by the Assignor under the Call Box Agreement from and after Closing Date. If the transaction is not consummated on or before July 10, 2008, this Agreement shall be null and void.
2. Terms of the Purchase Agreement. Assignor acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.
3. Representations and Warranties. Customer agrees that:
 - a. Attached hereto as Exhibit A is a true, correct and complete copy of the Call Box Agreement and all amendments and assignments thereto and there are no further modifications, amendments, supplements or understandings, oral or written, amending, supplementing or changing the terms of the Call Box Agreement;
 - b. The Call Box Agreement is in full force and effect and is a valid, legal and binding obligation of Assignor and Customer, enforceable in accordance with its express terms;

c. Customer is not aware of any defaults, breaches or facts that would constitute an event of default under the Call Box Agreement. Assignor has, to the best of Customer's knowledge, complied with all of the terms and conditions of the Call Box Agreement;

d. Prior to signing this Assignment Agreement, Customer has not consented to any agreement transferring Assignors interest in the Call Box Agreement.

4. Consent of Customer. Customer hereby consents to the foregoing assignment of the Call Box Agreement from Assignor to Assignee notwithstanding the existing Call Box Agreement as if Assignee was the original contractor under the Call Box Agreement.

5. Further Actions. Each of the parties hereto covenants and agrees, at its own expense, to execute this agreement and deliver such further instruments of transfer and assignment and to take such other action as may be reasonably required to effectively consummate the assignments and assumptions contemplated by this Agreement.

6. Succession. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Signatures received by facsimile shall be deemed to be considered original signatures. .

8. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provisions thereof.

9. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement is executed as of the date first set forth above.

Assignor

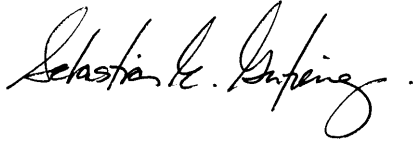
Comarco Wireless Technologies, Inc.



By: _____
Sam Inman, Chief Executive Officer

Assignee

Case Systems, Inc.



By: _____
Sebastian E. Gutierrez, President

Customer

By: _____