

Purchasing - Pct. 1 cont.

20

C. 1. AI-77372

OK

A. Acceptance and approval of an Interlocal Cooperation Agreement between the County of Hidalgo, the City of Progreso, and Urban County (CDBG) for a road overlay of Mile 2 W (Gonzalez Rd.) from (Military HWY 281 to 866 ft. north of Gonzalez Rd.);

P 1/4

B. In accordance with Section 791.014 of the Texas Government Code, requesting approval of a road improvement project to a portion of Gonzalez Rd. from (Military HWY 281 to 866ft. north of Gonzalez Rd.)

D.

Pct. 4

OK

1. AI-77384

P 4/1

A. Requesting approval of Supplemental Agreement No.3 to Work Authorization No. 1, under Contract No. C-15-136-06-02 with L&G Engineering, for professional services on "Ware Road (FM 2220) Project" to amend the following areas to include the additional scope of work and cost associated with the Aerial Imagery:

- Exhibit B - Scope of Services to be provided by the Engineer
- Exhibit D-1 - Estimated Man-Hour Breakdown

Estimated cost from the original Work Authorization No.1 will increase from \$1,410,038.14 to \$1,434,971.21; for a total Supplemental No.3 increase of \$24,933.07.

P 4/1

B. Pursuant to Article 14 of the original contract, request by L&G Engineering to engage B2Z Engineering as a subcontractor for aerial imagery services.

E.

IT Department

OK

1. AI-77277

P 4/2

A. Discussion, consideration, and action to approve a necessary CARES Act Relief Fund expenditure to cover cost not accounted for in the current budget and cannot be lawfully funded by line item, allotment or allocation, in order to assist with County functions and compliance with public health measures related to the ongoing COVID-19 public health emergency with establishing a WIFI Project to assist the citizens with distance learning including technical improvements, as well as teleworking capabilities which requires a maintenance and service agreement; the Court having reviewed the Agenda Item Briefing, herein finds that such expenditure is reasonable and necessary for the intended use.;

P 4/2

B. Requesting exemption from competitive bidding requirements under the Texas Local Government Code Section 262.024 (A) (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county; and, (2) an item necessary to preserve or protect the public health or safety of the residents of the county;

C. Approval to enter into a three (3) year Master Service Agreement with

2021.C - cont. Purchasing - IT

P4/2 ✓ SmartCom for the provision of certain services, as set forth therein commencing upon approval and subject to 1295 compliance.

2. AI-77330 Requesting authority to purchase a "Human Resources Applicant Tracking System & Employee Evaluations Software"; including Setup/Implementation and Training support services, maintenance and any present and future accessories through our membership/participation with DIR-TSO-3984 contract - awarded vendor SHI's authorized reseller NEOGOV in the total amount of \$160,226.18 with first year paying \$61,637.31 through requisition 419933 and second year paying \$98,588.87.
 OK ✓
 P4/2

F. Health & Human Services:

1. AI-77369 Requesting approval of Supplemental Agreement No. 1 for services under Work Authorization No. 1, Contract No. C-20-187-06-16 for Channin Engineering, resulting in an estimated cost increase of \$5,600.00 for the Repair of Modular Building for the Health Department.
 OK ✓
 P1/2

21.

Discussion, consideration and possible action regarding:

A. County response to disaster/health emergency:

1. CARES Act Funds

OK ✓ a. Discussion, consideration and approval to amend eligibility guidelines for the Hidalgo County Mortgage & Rent Relief Program

Na b. Discussion, consideration, and approval to amend the Hidalgo County Cares Small Business Grant Program guidelines and eligibility criteria

Na c. Measures necessary to preserve public health and safety

C. Direction regarding County government operations, including but not limited to essential functions - continue soc. dist. / facial coverings etc.

22.

Closed Session:

Commissioners' Court may go into Closed Session pursuant to Chapter 551, Texas Government Code, Sections 551.071, (Consultation with Attorney), 551.072 (Deliberation regarding Real Property), Section 551.074 (Personnel Matters) and Section 551.087 (Economic Development) to discuss the following:

A. Real Estate Acquisition

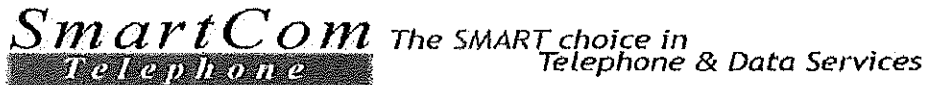
in @ 12:19
out @ 2:08

B. Private consultation and advice of counsel concerning pending, potential and/or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act Section 551.071, Government Code.

C. Consultation with Legal Counsel regarding Legal Action due to emergency situation

D. AI-77354 Cause No. 7:20-cv-00257; Catalina Zuniga Herrera et al v Steven Farias et al

E. AI-77323 Claim of Pedro Soto



600 Ash Ave., McAllen, Texas 78501 Phone: (956) 687-7070

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT (this "Master Service Agreement" or "MSA") is entered into effective as of the date set forth in the signature block of the Service Order (the "Effective Date") by and between SmartCom Telephone, LLC ("Seller"), on behalf of itself and its applicable Affiliates (as further set forth herein), and the buyer identified and signing the Service Order ("Buyer") for the provision of certain services, as set forth therein, to Buyer by Seller and/or its Affiliates.

As used in this Master Service Agreement and in any document incorporated into this Agreement by reference, "Agreement" means this Master Services Agreement, the Definitions and General Terms, its attachments, other documents referred to herein by reference, including, without limitation, the Product Supplements, and the Service Orders accepted by Seller pursuant to the terms hereof. In consideration of the mutual promises and agreement contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller (or, as applicable, its Affiliate) agrees to provide and Buyer agrees to purchase the Services according to the terms of this Agreement. **BY SIGNING THE SERVICE ORDER, BUYER ACKNOWLEDGES AND REPRESENTS THAT PRIOR TO ITS EXECUTION OF THE SERVICE ORDER IT HAS FULLY READ AND UNDERSTANDS (a) THIS MSA, (b) THE DEFINITIONS AND GENERAL TERMS DEFINED IN SECTION 1 BELOW, (c) EACH OF THE APPLICABLE PRODUCT SUPPLEMENTS, (d) ALL OTHER REFERENCED SCHEDULES, EXHIBITS AND/OR ATTACHMENTS, AND (e) SERVICE ORDERS EXECUTED IN CONJUNCTION HERewith OR PURSUANT TO THE TERMS HEREOF AND AGREES THAT THE DEFINITIONS AND GENERAL TERMS, THE APPLICABLE PRODUCT SUPPLEMENTS, SERVICE ORDERS AND ANY OTHER DOCUMENTS REFERRED TO AND INCORPORATED INTO THIS AGREEMENT ARE A PART OF THIS AGREEMENT AS IF SET FORTH HEREIN IN THEIR ENTIRETY. EXECUTION OF THE SERVICE ORDER CONSTITUTES AN AGREEMENT AND ACKNOWLEDGMENT THAT THE RELEASE, INDEMNIFICATION, AND LIMITATION OF LIABILITY PROVISIONS CONTAINED IN THIS AGREEMENT COMPLY WITH THE EXPRESS NEGLIGENCE RULE AND ARE CONSPICUOUS.**

- 1. DEFINITIONS AND GENERAL TERMS.** The provisions set forth in Seller's Definitions and General Terms, which are posted under the Terms & Conditions link at www.smartcomtelephone.com/terms, as of the Effective Date (the "Definitions and General Terms") are hereby incorporated into this Agreement by reference and made a part hereof for all purposes as if fully set forth herein. In addition to terms or phrases defined elsewhere in the Master Services Agreement, in any Product Supplement or in any other part of this Agreement, where capitalized in this Agreement, the terms or phrases defined in the Definitions and General Terms shall have the meanings set forth therein.

Paragraph 5 **Dispute Resolution** is modified as: Buyer hereby consents to the sole and exclusive jurisdiction of, and venue shall be in, the federal and state courts having situs in Hidalgo County, Texas.

- 2. SERVICES; PRODUCT SUPPLEMENTS.** (a) Subject to Seller's acceptance of Service Orders submitted by Buyer pursuant to the terms and conditions set forth below, Seller will provide the Services to Buyer described in and pursuant to the terms of the Product Supplement(s), which Product Supplements are posted under the Terms & Conditions link at www.smartcomtelephone.com/terms and are hereby incorporated into this Agreement by reference and made a part hereof for all purposes as if fully set forth herein.
(b) The Services that are available pursuant to this Master Services Agreement and the applicable Product Supplements may be requested by Buyer by submission of a Service Order to Seller. Charges and rates for ordered Services shall be set forth in the Service Order, with any additional applicable rates set forth in Seller's Miscellaneous Price Schedule. Seller's Miscellaneous Price Schedule, if applicable, is posted under the Terms & Conditions link at www.smartcomtelephone.com/terms and may be changed from time to time by Seller during the Term of this Agreement. If requested by Buyer in a Service Order in the form required by Seller, and accepted by Seller in a Firm Order Confirmation (a "FOC"), then Seller shall provide to Buyer and Buyer shall purchase from and pay Seller for the Services set forth therein. In each Service Order submitted by Buyer, Buyer will provide (i) all of the required information set forth in the Service Order applicable to the particular Service and (ii) any other information reasonably necessary to enable Seller to provide the Service. If Seller accepts the

Service Order it shall send a FOC to Buyer by facsimile, electronically or mail. If Seller desires to accept the Service Order but requires modifications of the Service Order, then Seller shall require Buyer to submit a new Service Order on mutually agreeable terms. Seller shall specify the Scheduled Service Date in the FOC provided for the applicable Service. In the event the Scheduled Service Date, Provisioning Interval or other date of service stated in the FOC conflicts with the requested service date on the Service Order, the Service date stated in the FOC shall govern as the Scheduled Service Date, subject to written agreement of the parties to expedite or delay such date and any applicable charges for such expediting or delay. If the Commencement Date does not occur on or before the Scheduled Service Date, unless due to an act or omission of Buyer or a third party, a Force Majeure Event, or as otherwise may be provided in the applicable Product Supplement, then Buyer shall be entitled to the remedies set forth in the Product Supplement for the relevant Service, WHICH REMEDIES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR THE DELAY OF SERVICE. If applicable for the Service, Seller shall conduct any applicable tests as set forth in the applicable Product Supplement to demonstrate that the Service meets the specifications set forth in that Product Supplement. Buyer and its Users shall cooperate and provide reasonable assistance with same, if applicable. Seller shall notify Buyer in writing when such Service is available for use (the applicable "Installation Notification"), and the date upon which the Installation Notification is issued shall be the "Commencement Date" for the applicable Service. Charges for a Service shall begin accruing upon the earlier of (i) the commencement of the applicable Service (which shall include Buyer's transmission of any traffic, if applicable, or other use of the facilities or Service for other than testing purposes) or (ii) the later of the Scheduled Service Date or the Commencement Date.

(c) The Point of Demarcation for all applicable Services originating and terminating on Seller's facilities shall be as set forth in the Service Order, unless modified by the FOC. The Point of Demarcation for any applicable Services originating or terminating on Third Party Facilities shall be determined by the third party which owns and/or operates such facilities. For applicable Services, unless otherwise set forth in a Service Order, Seller shall be responsible for installing, maintaining and repairing equipment, and performing monitoring on Buyer's side of the Point of Demarcation; provided that any costs incurred by Seller in this regard may be recovered as Non-Recurring or Recurring Charges under this Agreement as set forth in an agreed Service Order. Buyer and all Users shall conduct their operations in a manner that does not interrupt, impair or interfere with the operations of the interconnecting systems at or on Seller's side of the Point of Demarcation. Buyer and Users shall not adjust, align, attempt to repair, relocate or remove Seller's equipment or facilities, except as expressly authorized by Seller. If the equipment and facilities of Buyer or any User are not compatible with a Service provided to Buyer, any special interface equipment or facilities necessary to achieve compatibility shall be the sole responsibility and expense of the Buyer. Seller's equipment shall remain the sole and exclusive property of Seller, and nothing contained herein shall give or convey to Buyer any right, title or interest whatsoever in Seller's equipment. Seller's equipment shall at all times be and remain personal property, notwithstanding that it may be or become attached to or embedded in real property. Unless authorized by the Seller, Buyer shall not, and shall cause any User not to, tamper with, remove or conceal any identifying plates, tags or labels affixed to Seller's equipment or facilities and will not cause or permit Seller's equipment or facilities to be or become encumbered by any liens, security interests or other encumbrances.

(d) Buyer and, to the extent applicable, each User shall provide Seller and its agents and contractors, at no cost to Seller or its agents or contractors, all necessary or appropriate access whenever required to provide, modify and/or cease providing the Service under this Agreement, and all necessary or appropriate space, power and environmental conditions at any applicable Point of Demarcation. Where the granting of access or right-of-way to Seller and its agents and contractors requires the consent or approval of third parties, Buyer shall obtain such consent or approval on behalf of Seller and its agents and contractors. Buyer shall be liable for any loss or damage, including theft, to Seller's equipment or facilities to the extent that such loss or damage is the result of Buyer's or any Users', employees', agents' or contractors' negligent acts or omissions, willful misconduct, or breach of the terms of this Agreement.

3. **CHARGES AND PAYMENTS.** (a) The Service Order and/or Seller's Miscellaneous Price Schedule will set forth any one-time, non-recurring charges that may be applicable to the relevant Services (The "Non-Recurring Charges"), variable usage-based charges (the "Usage Charges"), and any Recurring Charges that may be applicable to the relevant Services (collectively, the "Charges"). Buyer shall be responsible for the payment of, and shall hold Seller and its Affiliates, harmless from and against, any sales, use, excise, consumption, access, bypass, gross receipts, duty, assessment, value-added and/or other taxes, fees, charges or regulatory surcharges that may arise in any jurisdiction (collectively "taxes") which are assessed by reason of the provision, sale or use of Services by Seller to Buyer under this Agreement (other than taxes imposed on Seller's net income, capital, or



net worth). Buyer shall immediately pay Seller for any all such taxes. Seller may be required to report revenues from certain purchases of Services and/or make contributions based on such revenues and/or sales to a state and/or federal Universal Service Fund ("USF") and various other local, state and federal government and/or quasi-governmental programs (collectively, the "Funding Programs"). Seller may impose one or more fees and/or surcharges to recover from Buyer the contributions made to such Funding Programs and Seller's costs associated therewith. Buyer understands and agrees that Seller may assume such contributions to the Funding Program are applicable to the Services provided to Buyer and charge and collect such assessments unless and until Buyer provides adequate exemption documentation and/or other required proof to Seller as determined by Seller in its sole discretion. Buyer shall provide any and all relevant government tax and/or Funding Program exemption proof to Seller prior to the provision of Services. If Buyer is not able to provide such satisfactory exemption proof, or there is no applicable exemption, Seller may charge Buyer, and Buyer shall pay Seller, taxes, and surcharges as set forth above. Buyer shall comply with all Applicable Laws permitting it to collect taxes or other charges from Users and/or requiring it to make payments to Funding Programs.

(b) If the Services commence or end on a day other than the first day of a calendar month, then any Recurring Charges that are applicable for the period in which such Services commence or end shall be prorated in the proportion that the number of days the Services are provided in such month bears to the total number of days in the month. Buyer shall be liable for Charges for all of its and any Users' use of the Services, and shall be so liable whether or not it receives payment or reimbursement for the same from Users. Seller shall provide Buyer invoices for the Charges and any other amounts owed by Buyer to Seller under this Agreement. All invoices shall be sent to Buyer's billing address set forth in the Service Order. Buyer agrees to make payment under this Agreement to Seller in available funds by check or wire transfer at such location as Seller may from time to time designate in writing on the invoice or otherwise. Buyer shall pay Seller such invoices on or before thirty (30) days, in compliance with the Texas prompt payment act, after the date of the invoice for the Services provided or amounts otherwise owed under this Agreement, without deduction, setoff or delay for any reason and, if the invoiced amount is not paid when due, then a late charge on any unpaid amount shall accrue and be owed at a rate of one and one-half percent (1 ½ %) per month, not to exceed any applicable maximum lawful rate, and Buyer shall pay to Seller any court costs, reasonable attorney's fees and all other costs of collection which Seller may incur in enforcing the terms of this Agreement. If such non-payment continues after the due date of such payment, then Seller may, without notice, suspend the Services without liability and without prejudice to its right to exercise other remedies. If any overcharge or undercharge shall at any time be found and the invoice therefore has been paid, Seller shall refund the amount of any overcharge received by Seller and Buyer shall pay the amount of any undercharge within thirty (30) days after final determination thereof; provided, there shall be no retroactive adjustment of any such overcharge or undercharge if the matter is not brought to the attention of the Seller in writing within one hundred twenty (120) days following the date the Services were provided under this Agreement regarding which the overcharge or undercharge applies; provided that such adjustment period shall be adjusted to coincide with the period in which adjustments are permitted under a third party's contract or tariff, whichever is applicable, with respect to Services provided on Third Party Facilities to the extent that such contract or tariff provides for different adjustment periods than those set forth above.

(c) In order to support Buyer's payment obligations under this Agreement, Seller may perform a credit review of Buyer from time to time. Based on Seller's credit review and/or other information available to Seller (including any history of delinquent payments), Seller may require Buyer at any time to provide adequate assurances that it will pay all obligations as they become due by providing to Seller a deposit or other Performance Assurance in the form and amount requested by Seller with five (5) days of such request. Notwithstanding provisions of Applicable Law, the Seller shall have the right to comingle, invest, and use cash collateral that Seller holds as Performance Assurance, and shall not be liable to Buyer for the payment or accrual of any interest thereon. Buyer grants Seller a present and continuing security interest in and to, lien upon, and right of set-off against any and all Performance Assurance. Upon the expiration of this Agreement, any Performance Assurance held by Seller may be applied to any outstanding charges hereunder and any remainder thereof shall be returned to Buyer, or in respect of a letter of credit, to the issuer thereof upon the settlement of the account.

4. **OPERATING AND PERFORMANCE MATTERS.** The operating and performance standards for each Service shall be as set forth in the Product Supplement for the relevant Service. Seller will provide Buyer five (5) days' prior written notice of any scheduled maintenance performed by or on behalf of Seller on its facilities that, in Seller's sole opinion, has a substantial likelihood of noticeably affecting the Service. Seller will provide Buyer as much advance notice as reasonably practicable with regard to any scheduled maintenance performed on any Third Party Facilities that provides Services under this Agreement. Notwithstanding the foregoing, in the event of an emergency, Seller will have the right to perform maintenance and/or restoration of its facilities or



Third Party Facilities (including, without limitation, actions required to restore continuity to a severed or partially severed fiber optic cable, restore dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions), and Seller will notify Buyer as soon as reasonably practicable thereafter. Buyer will follow Seller's procedures and processes for reporting repair, problem and maintenance requirements associated with the Services provided to Buyer. If, on responding to a Buyer-initiated service call, Seller determines that the cause of a Service Outage or other problem is a failure, a malfunction or the inadequacy of Buyer's equipment or facilities, then Buyer shall compensate Seller, at Seller's prevailing rates, for time and materials expended during the service call. The remedies associated with any failure or delay of Seller (a) to provide the Services in accordance with the operating and performance standards set forth in the Product Supplement for the relevant Service, (b) to maintain and operate facilities in accordance with Sections 4 and 6, and/or (c) to otherwise perform in accordance with any other obligations it may have under this Agreement or otherwise to Buyer (any failure of Seller with respect to (a), (b), or (c) above being referred to as a "Performance Failure") shall be exclusively in the form of the liquidated damages and other express remedies (the "Performance Liquidated Damages") set forth in the Product Supplement for the relevant Service. BUYER'S RIGHT TO RECEIVE SUCH PERFORMANCE LIQUIDATED DAMAGES SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL ITS ESSENTIAL PURPOSE.

5. **TERM OF AGREEMENT.** (a) The term of this Agreement shall be for a period of three (3) years from the Effective Date ("Initial Term"). The term of this Agreement shall continue year to year after the Initial Term until terminated prior to the beginning of any contract year upon sixty (60) day's prior written notice by either Party delivered to the other party (with the combination of the Initial Term and any extension thereof in accordance with this Section 5(a) being referred to as the "Term"). Each Service Order placed under this Agreement shall have its own term, as indicated on such Service Order ("Service Term"). At the end of the Service Term for any Service Order, such Service Order shall continue on a year-to-year basis ("Extension Period") unless either Party gives written notice to the other that such Service Order shall not be continued, such notice to be delivered at least sixty (60) days before the end of the Service Term, or the Extension Period. Buyer's Charges, as set forth in the Service Order, for Services provided by Seller during the Service Term shall continue to apply to Buyer's Service throughout any Extension Period, unless modified by Seller on thirty (30) days' notice. If the Service Term of one or more Service Orders extends beyond the expiration or termination of this Agreement, notwithstanding the language above, then this Agreement will remain in effect as to each Service Order then in effect until the Service Terms for such Service Orders placed hereunder have expired. In no event will new Service Orders under this Agreement be permitted if the Agreement has expired or been terminated. Notwithstanding the following, the Buyer can terminate this Agreement at any time during any term upon (30) day written notice to the other party.

(b) If Buyer desires to terminate any Service after Seller's acceptance of the Service Order and prior to the expiration of the Service Term, Buyer may do so by providing notification thereof to Seller at least thirty (30) days in advance of such termination. Unless otherwise agreed by the Parties in the Service Order for such terminated Service, in the event of any such termination, an amount equal to the Termination Charge, which shall be equal to the sum of (i) any Non-Recurring Charges applicable to the terminated Service to the extent not already paid by Buyer (including any and all waived Non-Recurring Changes); (ii) the Recurring Charge and/or minimum Usage Charges applicable to the terminated Service multiplied by the number of months (or other applicable billing interval) then remaining until the end of the applicable Service Term established pursuant to the Service Order for such terminated Service, plus any applicable taxes and surcharges for contributions to Funding Programs; (iii) any termination costs payable by Seller to any Third Party associated with any portion of the applicable terminated Service being provided on any Third Party Facilities and (iv) any reasonable internal costs that are not otherwise recovered by Seller through the payment of the amounts set forth in (i) through (iii) above.

(c) A Party ("The Non-Defaulting Party") shall have the right to terminate this Agreement upon an Event of Default by the other Party (the "Defaulting Party") upon prior written notice to the Defaulting Party provided no later than the cure of any such Event of Default. The Non-Defaulting Party may, either additionally or in the alternative, elect to terminate one or more of the Services for which an Event of Default has occurred. An "Event of Default" shall be deemed to have occurred with respect to a Defaulting Party upon the occurrence of any of the following: (i) the failure by Buyer to make, when due, any payment required pursuant to the Agreement, or to provide Performance Assurance as provided in Section 3(c); (ii) the failure to perform any material covenant or obligation set forth in this Agreement (other than an Event of Default under (i), above, or any default for which the exclusive remedy is provided in Section 2 or, any other provision of this Agreement or the Product Supplement



for the relevant Service), if such failure is not remedied within thirty (30) days after written notice thereof by the Non-Defaulting Party to the Defaulting Party; provided that if such default is not capable of being cured within such thirty day period with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed ninety (90) days) so long as the Defaulting Party is exercising reasonable diligence to cure such failure; (iii) the Defaulting Party becomes Bankrupt; (iv) Buyer merges with or into, or reorganizes, amalgamates, consolidates or enters into any other transaction in which substantially all of its assets are transferred to, another Person who fails to assume all of Buyer's obligations under this Agreement; or (v) Buyer fails to comply with the credit provisions set forth in Section 3(c). If an Event of Default with respect to Buyer occurs, in addition and without prejudice to its right to terminate as set forth above, Seller shall have the right without notice to Buyer to suspend the performance of all or part of its obligations under this Agreement for so long as such Event of Default is continuing. Upon termination of any Services and/or the Agreement under this Section 5(c), to the extent that Buyer is the Defaulting Party, Buyer shall be obligated to pay the Termination Charge and any outstanding charges for Services rendered prior to such termination and such obligations to pay shall expressly survive the termination of both the Services and this Agreement. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER'S RIGHT TO TERMINATE THIS AGREEMENT AS A RESULT OF AN EVENT OF DEFAULT BY SELLER SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY ASSOCIATED WITH SUCH EVENT OF DEFAULT.**

(d) If Buyer or any User has been permitted to install or furnish equipment or other property for use in connection with a Service ("Equipment") in any area owned or controlled by Seller, its Affiliates or their respective contractors or agents, and if Buyer fails to remove (or cause the User to remove) such Equipment from such area within ten (10) days after the expiration of the applicable Term or termination of the applicable Service Order, Seller may, without notice or demand and in addition to any other right or remedy available at law or equity, take possession of such Equipment, without being guilty of trespass. Seller may use all force necessary to effect such entry, to remove Buyer, to remove any person or User, or to remove any or all of Buyer's or a User's Equipment from such areas and store the same, all at Buyer's expense. Any Equipment removed may be stored in any public warehouse or elsewhere at the costs of and for the account of Buyer, and Seller shall not be responsible for the care or safekeeping thereof. Buyer expressly waives any and all claims for loss, destruction, damage, or injury, which may be occasioned by any of the aforesaid acts, and shall ensure that all Users agree to a substantially similar waiver. Any Equipment so removed will be returned to Buyer upon payment in full of all storage costs, past due license fees and Charges. If within ten (10) days following such Equipment removal, Buyer has not requested the return of its Equipment and paid any sums owed, then Seller may exercise all rights of ownership over such Equipment including the right to sell same and retain possession of sale proceeds. Seller's exercise of any remedies provided for in this section shall be without prejudice to any other remedies Seller may have provided for herein or by Applicable Law.

6. **INDEMNITIES AND LIMITATIONS OF LIABILITY.** (a) **Seller Indemnity.** Subject to the other provisions of this Agreement, Seller, on behalf of itself, its Affiliates, successors and assigns, agrees to indemnify, defend and hold harmless Buyer, its Affiliates, and their successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims for personal injury or damage to tangible personal or real property that arise from or out of Seller's gross negligence or willful misconduct in performing its obligations under this Agreement.

(b) **Buyer Indemnity.** Subject to the other provisions of the Agreement, Buyer, to the extent permitted by the laws of the State of Texas, if applicable, on behalf of itself, its Affiliates, successors, assigns, officers, directors, employees and agents, agrees to indemnify, defend and hold harmless Seller, and its Affiliates, and their successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims (i) for personal injury or property damage that arise from or out of Buyer's or any User's negligence or willful misconduct, (ii) arising from or relating to the Service or any content used or transmitted by Buyer or any Users over the Services, (iii) made against Seller by any Users, or (iv) arising from or relating to Buyer's or any User's breach of any of Buyer's representations or obligations under this Agreement. The term "property" as used in this Section 6(b) shall include real, personal, tangible, and intangible property. **THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION 6(b) SHALL APPLY EVEN IF CAUSED, IN WHOLE OR IN PART BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF SELLER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.**

(c) **Damages / Causes of Action.** (i) For purposes of this Section 6(c), the term "Seller" shall be deemed to include Seller, its Affiliates, owners, directors, officers and employees, and any person or entity assisting Seller in its performance pursuant to this Agreement. (ii) **NOTWITHSTANDING ANYTHING TO THE**

CONTRARY, THE LIABILITY OF SELLER TO BUYER (A) FOR BODILY INJURY OR DEATH TO ANY PERSON OR FOR DAMAGE TO ANY REAL OR TANGIBLE PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER SHALL BE LIMITED TO BUYER'S RIGHT TO PROVEN DIRECT DAMAGES, AND (B) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET FORTH IN SUBSECTION (A) AND NOT OTHERWISE EXCLUDED OR LIMITED BY THIS AGREEMENT, SHALL, IF SELLER IS JUDICIALLY DETERMINED TO HAVE SOME LIABILITY TO BUYER, FOR WHATEVER REASON, ARISING UNDER OR RELATED TO ACTS OR OMISSION RELATED TO THIS AGREEMENT, IN THE AGGREGATE FOR ALL SUCH ACTS OR OMISSIONS, BE LIMITED TO AN AMOUNT EQUAL TO THE RECURRING CHARGES UNDER THIS AGREEMENT FOR THE FIRST SIX (6) MONTHS OF THE TERM HEREOF (iii) NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY BUYER OR ANY USER ARISING FROM OR RELATED TO ANY CATASTROPHIC STORMS OR FLOODS, FIRES, LIGHTNING, EARTHQUAKES OR OTHER ACTS OF GOD, WARS, CIVIL DISTURBANCES, REVOLTS, INSURRECTIONS, TERRORIST ACTIVITY, SABOTAGE, THEFT, VANDALISM, TRANSPORTATION DISASTERS, EXPLOSIONS, OR OTHER EVENT OF CASUALTY; (iv) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL BUYER OR SELLER OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL LOSS OR DAMAGE (OTHER THAN SUCH DAMAGES AS MAY BE INCLUDED AS A COMPONENT OF LIQUIDATED DAMAGES OR TERMINATION CHARGES UNDER THIS AGREEMENT) SUFFERED BY SUCH OTHER PARTY AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR ITS ACTS OR OMISSION RELATED TO THIS AGREEMENT WHETHER OR NOT ARISING FROM SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF INDEMNITY PROVISIONS, BREACH OF WARRANTY OR ANY OTHER THEORY OR SOURCE, WHETHER OR NOT FORESEEBABLE AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY THEREFROM. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY SELLER; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT OF SERVICE CREDIT ALLOWANCES SPECIFIED IN THE RELEVANT PRODUCT SUPPLEMENT) OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF BUYER'S OR ANY THIRD PARTY'S APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

(d) IN ADDITION TO THE FOREGOING LIMITATIONS ON LIABILITY, BUYER HEREBY WAIVES ANY RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, ET SEQ., TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTING WITH AN ATTORNEY, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER. BUYER EXPRESSLY AGREES, ACKNOWLEDGES, REPRESENTS, WARRANTS AND COVENANTS THAT IN CONSIDERING THIS AGREEMENT AND THIS SECTION THAT BUYER (i) HAS KNOWLEDGE AND EXPERIENCE IN THE TELECOMMUNICATIONS, DATA CENTER, AND INTERNET TRANSPORT BUSINESS AND SUCH KNOWLEDGE AND EXPERIENCE ENABLES BUYER TO EVALUATE THE MERITS AND RISKS OF ALL OF THE TRANSACTIONS, OPERATIONS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, AND (ii) HAS THE ABILITY TO PROCURE SERVICE FROM OTHER PROVIDERS AND IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO SELLER, BUT THAT BUYER HAS AGREED TO THIS AGREEMENT AND SPECIFICALLY THIS SECTION IN NEGOTIATIONS INVOLVING REAL CHOICE ON THE PART OF THE BUYER.

(e) Limitation of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY TO BUYER, OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, INFRINGEMENT, TITLE, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SERVICE PROVIDED OR NOT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SELLER ARE HEREBY EXCLUDED AND DISCLAIMED.

- (f) Survival and Duration. The indemnification provisions and the limitations and exclusions of liability contained in this Agreement, the obligation to pay Termination Charges, any claim for non-payment, and any other provisions of this Agreement, that by their sense and context, are intended to survive termination of this Agreement shall survive the termination of this Agreement. Claims for indemnified losses may be made so long as any claim may be made in respect of such matters under any applicable statute of limitations; provided, however, that the foregoing shall not affect any claim made in good faith prior to the date of such expiration.
7. ENTIRE AGREEMENT AND AMENDMENT. This Agreement represents the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral, between the Parties with respect to the subject matter hereof. Unless provided otherwise in this Agreement, this Agreement may be amended only by a writing executed by the Parties.
8. CONFIDENTIALITY. Each party agrees that the terms of this Agreement and all information furnished to it by the other Party which is marked or reasonably identified or identifiable as confidential or proprietary, including pricing, maps, network routes, financial terms, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). The Receiving Party will treat the Proprietary Information of the Disclosing Party and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees, agents, consultants, potential acquirers or investors, lenders, attorneys or other advisors on a need to know basis and who agree to be bound by the terms of this Section (8), without the written consent of the Disclosing Party. The Receiving Party will use Proprietary Information only as needed for the purposes of this Agreement. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; (ii) was previously known to or is independently developed by the Receiving Party free of any obligation to keep it confidential; or (iii) becomes available to the Receiving Party without restriction from a third party whose disclosure does not violate any confidentiality obligation. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt written notice to the Disclosing Party of the requirements of such disclosure and cooperate fully with the Disclosing Party to minimize such disclosure, and disclosure after such notice shall not be a breach thereof.
9. AUP. Buyer and all Users shall comply with Seller's Acceptable Use Policy ("AUP"), as set forth under the AUP link at <http://www.smartcomtelephone.com/aup>, and hereby agree to the terms thereof in their entirety as amended from time to time which are hereby incorporated into this Agreement for reference.
10. CUSTOMER PROPRIETARY NETWORK INFORMATION. Seller is required by Applicable Law to treat confidential account, usage, call detail and billing related information about the quantity, technical configuration, type, destination, location, and amount of use of Buyer's telecommunications services ("CPNI") confidentially. Buyer agrees that Seller may share CPNI within its business operations (e.g., broadband transport, colocation, direct internet access, IT services and broadband services divisions), and with businesses acting on Seller's behalf (but not to third parties not acting on Seller's behalf), to determine if Buyer could benefit from the wide variety of Seller products and services, and in its marketing and sales activities, Buyer may withdraw its authorization at any time by informing Seller in writing. Buyer's decision regarding Seller's use of CPNI will not affect the quality of service Seller provides Buyer. CPNI does not include Buyer's or any User's name, address, or telephone number. To the extent that Buyer is utilizing a consultant in procuring its Services from Seller, Buyer authorizes Seller to discuss its account, including CPNI, with such Buyer consultant.

11. **COUNTERPARTS AND DRAFTING.** This Agreement has been negotiated between and jointly drafted by Seller and Buyer, and the Service Order has been executed by an authorized representative of each party.

Buyer: County of Hidalgo
By: Richard F. Cortez
(Signature)
Richard F. Cortez
(Print Name)
Title: County Judge
Date: 9/15/20

Seller:
SMARTCOM TELEPHONE, LLC
By: [Signature]
(Signature)
ALAN YODER
(Print Name)
Title: President
Date: 9-16-2020

APPROVED BY
COMMISSIONERS' COURT
ON: 9/15/20 [Signature]