

FILED
AT 2:50 P M
OCT 30 2018
ARTURO GUAYAN, JR. COUNTY CLERK
HIDALGO COUNTY TEXAS

PROPOSAL ACCEPTANCE AND AGREEMENT

THIS AGREEMENT is entered by and between Hidalgo County ("customer") address at 2802 S. Business Hwy. 281 Edinburg, TX 78539 0 and Smartcom Telephone, LLC ("Smartcom") address at 600 Ash Avenue, McAllen, Texas 78501, for the purpose of establishing the terms and conditions under which Smartcom will provide Point-to-Point Fiber Services. Smartcom reserves the right to refuse service.

SERVICE TO BE PROVIDED. Smartcom, under the terms of this agreement will provide to Customer Point-to-Point Fiber Services as listed under Services below:

Services	Location Name	Address	Monthly Cost
Pont-to-Point Fiber Services 1Gbps	Hidalgo County Court House	100 E Cano, Edinburg, TX 78539 to 100 N Closner Blvd, Edinburg, TX 78557	\$449.00

Plus applicable regulatory fees and surcharges

TERMS OF THE AGREEMENT. This Agreement shall be in effect for an initial term of twelve (12) months, commencing on project completion through October 30, 2019 with a voluntary extension for two additional twelve (12) month terms unless notification is given in writing of the CUSTOMER's decision prior to expiration of the initial term. Otherwise, if a new term agreement is not entered into within 30 days, the service will revert to a "month-to-month" service agreement. The monthly service charges may increase to the then-current rate, unless prior to the end of the initial term either party notifies the other, in writing, of their intent to terminate the agreement.

CHANGES TO SERVICE. A move of service will be considered as a "disconnect" and a new installation. Charges for new service will apply.

PAYMENT SCHEDULE. At the time of the first bill, the Customer will be billed Non-Recurring (installation) charges, as well as the appropriate monthly recurring charges ("MRC") for the service(s) ordered. All billing for services is done in advance. Title to any premise equipment supplied by Smartcom shall remain the property of Smartcom. Customer assumes the risk of loss or damage of the equipment upon delivery to Customer's location.

Monthly service charges are due and payable upon receipt of statement. Failure to pay monthly service charges shall give Smartcom the right, without liability, to temporarily disconnect service. To restore service will require payment of any unpaid balance and a reconnect charge. The charge for reconnecting is \$50.00 per site. If service is not restored within ten (10) calendar days, the service will be permanently disconnected. To restore service after permanent disconnect, prepayment of full unpaid balance, early termination charge, and new installation charges will apply.

RETURNED CHECKS: A returned check will be considered non-payment of the account. A \$35.00 processing fee will be charged on all returned checks.

APPROPRIATE USE. Appropriate use of Smartcom's Services. Customer agrees to maintain all passwords as private and confidential information. Customer agrees to use its Smartcom account in a way that conforms to all applicable laws and regulations. Customer understands that violation of certain generally accepted guidelines on Internet usage, such as restrictions on mass e-mailings (Spam) and advertising, or posting to inappropriate newsgroups, may cause severe operating difficulties for Smartcom, and would be a likely cause for the termination of Customer's account. Customer specifically agrees not to make any attempt to gain unauthorized access to any other systems or networks. Customer agrees to abide by Smartcom's Subscriber Acceptable Use Policy.

INTERNET CONTENT. Customer understands that the information available through Smartcom or interconnecting networks may not be accurate, including the content displayed on the Smartcom Desktop. Customer understands that the some of the information available through Smartcom or interconnecting networks may be intended for adult audiences. Any filtering of internet content will be the sole responsibility of Customer.

SECURITY POLICY. Customer understands that internetworking communications are not secure, and may be subject to interception or loss. Smartcom makes no warranties of any kind, either express, implied, or statutory concerning the data or information available through the use of its Smartcom network. Customer understands that the use of its Smartcom account, and any data or information accessed using that account, will be completely at its own risk. Customer is responsible for its network security. Smartcom will not be liable for damages arising out of unauthorized access to Customer's network.

CUSTOMER PROVIDED EQUIPMENT (CPE). Smartcom is not responsible for equipment purchased/installed by Customer. Smartcom will not work on, or open any Customer-owned or personal computers. Any equipment purchased from Smartcom becomes Customer Provided Equipment (CPE) upon installation.

INSTALLATION. Prior to installation, Customer is responsible for ensuring that their computers are configured for network connection. Smartcom will provide/install the service to the Demarc, Intermediate Distribution Facility (IDF), Main Distribution Facility (MDF) or Customer designated area at the Customer's premises at the Customer's request. Customer will provide, or through a third party vendor, inside wiring and jack work.

Installation dates and times will be determined and communicated to Customer. If technician is on site and access cannot be provided, Customer may be charged a \$45.00 "no show" fee and rescheduling may result in a delay of service.

SERVICE DELIVERY. Actual data transmission or throughput may be lower due to Internet congestion, data filters, server or router speeds, protocol overheads, and other factors which Smartcom cannot control.

SERVICE CALLS. If Smartcom is called to the Customer site and it is determined that the problem is other than the Smartcom network or Smartcom-Provided interface device, a service fee of \$65 will be charged for the first hour or any fraction thereof, and \$25.00 for each additional half hour increment. The stated rates apply during regular business hours, out-of-hours; weekend and holiday rates will be higher.

DELAY. Smartcom will not be liable for any delay in the delivery or installation of any service or for any damages suffered by Customer by reason of such delay is directly or indirectly caused by, or any manner arises from transportation delays or any other cause beyond the control of Smartcom.

CONSEQUENTIAL DAMAGES. Smartcom is not responsible for any consequential damages resulting from failure of or suspension of services.

EARLY TERMINATION. Cancellation/termination before the end of the initial term period will be subject to a termination liability charge equal to 50% of the remaining balance of the contract. Additional charges may apply based upon the type of services.

NON-APPROPRIATIONS. By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Agreement Term. In the event

Revised 01/2013

Customer's Initials: 

Customer is unable to obtain the necessary appropriations or funding for the Services provided under this Agreement, Customer may terminate the Services without liability for the termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with SMARTCOM to develop revised terms, an alternative payment schedule or a new agreement to accommodate Customer's budget. Customer must provide SMARTCOM thirty (30) days' written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Attachment, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

ATTORNEY'S FEES. If either party commences an action against the other party to force the provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party, reasonable attorney's fees and cost of suit.

SEVERABILITY. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

NO IMPLIED WARRANTIES. The customer acknowledges that the services of the company are of such a nature that the services can be interrupted for many reasons other than the negligence of Smartcom, and that damages resulting from any interruption of the services are difficult to ascertain. Therefore, the customer agrees that Smartcom shall not be liable for any damages arising from the customer's use of the system or the services. Smartcom makes no warranties of any kind, express or implied, with respect to the system or the services. Smartcom disclaims any warrant of merchantability, fitness for a particular purpose, or non-infringement with respect to the system and the services. Smartcom shall not be liable to the user, or to any third party, for any loss or damage as a result of the use of the system or the services. This includes but is not limited to the loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions, whether caused by Smartcom's own negligence, errors, omissions or otherwise.

The liability of Smartcom for mistakes, omissions, interruptions, delays, errors, or defects in transmission shall not exceed an amount equivalent to the proportionate monthly recurring charge to the Customer for the period of service during which such events occur. No credit shall be allowed for an interruption of a continuous duration of less than two (2) hours. For purposes of determining service credits, a month shall be deemed to have seven hundred twenty (720) hours. Any credits will be offset against charges billed during the next month. Additional limitations on liability can be found in Smartcom's current End-User tariff on file with the Public Utility Commission of Texas.

FORCE MAJEUR: Smartcom is not liable for failure to perform their obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither party is entitled to terminate this Agreement due to such circumstances.

VENUE. In the event of legal action arising out of or related to this Agreement, including claims for non-payment of amounts owed hereunder, Hidalgo County, Texas shall be the exclusive jurisdiction and legal venue for said action This Agreement shall be construed according to the laws of the State of Texas.

EXECUTED this 27th day of October, 2018

Ramon Garcia
Customer Signature

Ramon Garcia
Printed Name

2802 S. Business Hwy. 281
Billing Address

Edinburg TX 78539
City State Zip Code

(956) 318-2626
Billing Telephone Number

[Signature]
Smartcom Telephone, LLC. Signature

Alan Yoder
Printed Name

600 Ash Avenue
Address

McAllen TX 78501
City State Zip Code

956-687-7070
Telephone

APPROVED BY
COMMISSIONERS' COURT
ON: 10/23/18 [Signature]

Lease and/ or Service Agreement

Company's Name: SMARTCOM TELEPHONE

Department: IT DEPARTMENT

AI- 67268 Approval through CC on: 10/23/2018

ATTEST:

By: Arturo Guajardo Jr.
Arturo Guajardo Jr., County Clerk



Date: 10/30/2018

APPROVED AS TO FORM:

Hidalgo County Office of the Criminal District Attorney,

Ricardo Rodriguez, Jr.

By: Josephine R. Solis

Josephine R. Solis, Assistant District Attorney
Civil Litigation Division

EVALUATOR #3	98	80	75
TOTAL	287	240	222
RANKING	1	2	3

Signature
Director

B. Authority for the Purchasing Department to negotiate a professional engineering services agreement commencing with the No. 1 ranked firm of *B2Z Eng'g*

D. Pct. 4

Jose DA's
Co Judge
Co Clerk

OK

1. AI-67227 A Pursuant to Hidalgo County's **Exiting Elected Official Expenditure Policy**, requesting approval of "Expenditure" [which exceeds the transaction amount] for Precinct #4 in connection with the contracting of a public relations company/firm.

B. Acceptance and approval of an initial two year consulting and other related services contract [\$54K/yr.] between awarded vendor, ABC Consulting Group and HC-Pct #4 through county's membership/participation in Region 8 Education Service Center Cooperative Purchasing Program TIPS with authority to execute agreement subject to legal counsel's final legal review as to form including compliance with Form 1295 and insurance requirements.

2. AI-67110 Requesting approval of claim for the vendor identified below, with authority for County Treasurer to issue payment after reviewing and auditing procedures are completed by County Auditor as product was ordered, picked up and used [through an existing open Purchase Order] after the expiration of the contract:

Vendor	Invoice	Date	Amount
Frontera	218-12217	08/22/18	\$2,228.47

E. IT Department

OK

1. AI-67279 Pursuant to procurement packet, requesting action to approve evaluating committee for: "Countywide Internet Connection & Connectivity" - RFP No. 2017-314-08-29-HGO including, but not limited to, the following options:

A. Recommended evaluation committee as presented for consideration by IT:

- Leonel Torres, Network/Infrastructure Administrator
 - Judith Escamilla, Senior IT Manager
 - Renan Ramirez, Senior IT Manager
 - Stan Ramos, Admin Operations Coordinator with
- Recommended alternate evaluator:
 Rigoberto Hinojosa, Director of Operations' **OR**, **HHS**

add Valde- Armando Carr, Pct. 2 to participate Lezbeth, Pct. 4 Pepe, Pct. 1

B. Other as selected/designated by Commissioners Court.

2. AI-67268 Requesting authorization to enter into a 12 month agreement with SmartCom Telephone, for Point-To-Point Fiber Services for the Hidalgo County Courthouse with authority for the County Judge to sign all required documentation and subject to compliance with Form 1295 when/if applicable.

APPROVED

F. Health & Human Services Dept.

1. AI-67252

Zimbra

hector.garcia1@co.hidalgo.tx.us

Re: IT Department SmartCom Agreement

From : Josephine Ramirez <josephine.ramirez@da.co.hidalgo.tx.us>

Fri, Oct 12, 2018 03:53 PM

Subject : Re: IT Department SmartCom Agreement

To : Hector A. Garcia <hector.garcia1@co.hidalgo.tx.us>

Cc : Martha Salazar <martha.salazar@co.hidalgo.tx.us>, Dina Trevino <dina.trevino@co.hidalgo.tx.us>

I have reviewed the attached agreement and approve as to form.

Josephine Ramirez Solis

Assistant Criminal District Attorney

Chief - Civil Division

Office of Criminal District Attorney

Hidalgo County, Texas

100 E. Cano

Edinburg, TX 78539

(956) 292-7609 ext. 8186

(956) 292-7619 FAX

josephine.ramirez@da.co.hidalgo.tx.us

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On Fri, Oct 12, 2018 at 2:18 PM hector garcia1 <hector.garcia1@co.hidalgo.tx.us> wrote:
Good Afternoon Josephine,

Could you please assist us with reviewing the attached agreement and advise me if it can be approved as to form?

Respectfully,

--

Hector Garcia
Contracts Specialist I
Hidalgo County Purchasing Dept.
2812 S Bus. Highway 281
Edinburg, Texas 78539
T: (956) 318-2626 x4857
F: (956) 292-7612

From: "renan ramirez" <renan.ramirez@co.hidalgo.tx.us>
To: "Martha Salazar" <martha.salazar@co.hidalgo.tx.us>
Cc: "judith escamilla" <judith.escamilla@co.hidalgo.tx.us>, "edna kirby" <edna.kirby@co.hidalgo.tx.us>, "dina trevino" <dina.trevino@co.hidalgo.tx.us>
Sent: Friday, October 12, 2018 1:39:04 PM
Subject: Emergency purchase : Circuit from Admin Building Point to Point to Courthouse 500 Meg

Ms. Salazar,

On Monday, October 8, 2018, the county owned fiber connection between the Courthouse and Annex 3 was severed by the construction of the new court house.
The cut left Annex 3, disconnected from the County network, internet and phone system.

The following departments were affected:

- District Attorney
- County Judge
- Emergency Management
- IT
- Adult Probation
- Public Affairs

In order to resolve the lack of connectivity we ordered a circuit from SmartCom. Edna is getting all the funding and paperwork ready.

Please let me know if you have any questions.

> Thank you!

Renán Ramirez
Information Technology
County of Hidalgo, Texas
o: 956-289-7444

From : hector garcia1 <hector.garcia1@co.hidalgo.tx.us>

Fri, Oct 12, 2018 02:18 PM

Subject : IT Department SmartCom Agreement

 1 attachment

To : josephine ramirez <josephine.ramirez@da.co.hidalgo.tx.us>