



AGREEMENT

THIS AGREEMENT (the "Agreement") made this 27th day of October, 2017, by and between the CITY OF COALINGA ("City") and HIGH DESERT WIRELESS BROADBAND COMMUNICATION LLC, a California Limited Liability Company dba CODE 3 IT AND SYSTEM INTEGRATION ("Consultant"),

WITNESSTH:

WHEREAS, City wishes to hire Consultant to provide maintenance of City's computer hardware and software and system integrator consulting services which includes but is not limited to related ongoing projects, ad-hoc training, project management, network administration, procurement, trouble-shooting, upgrades, and proactive planning as more particular described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Services") and Consultant is agreeable thereto under the terms and conditions described hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth hereinafter, the parties agree as follows:

1. The parties incorporate the foregoing recitals as if fully set forth herein verbatim.
2. City hereby contracts with Consultant to perform the Services and Consultant agrees to provide the Services under the terms and conditions hereinafter described.
3. Consultant shall provide the Services (not to exceed 40 hours per month) for a fee of \$3,600.00. Any additional compensation to Consultant shall be calculated based on the number of hours expended by Consultant's staff charged at the rates more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof. City shall pay Consultant based on invoices submitted by Consultant no more often than monthly. The invoices shall contain a description of the Services performed during the period referred to in the invoice and of the employees performing them, and the number of hours expended, provided, however, that no such invoice shall include charges for Services not yet

performed. Each invoice shall contain such other information and documentation as City may reasonably require from time to time. City Manager or his designated representative shall have the right of reasonable review of each invoice and, at the conclusion of the review, City Manager shall place the matter on the agenda for the next available City Council meeting for consideration by the City Council. Upon approval of each such invoice by the City Council, same shall be paid in the regular cycle of payments made by City for other bills and claims.

(a) In addition to the compensation payable to Consultant, City agrees to pay certain costs that may be incurred by Consultant (the "Costs"). These Costs may include hardware, software, peripherals and procured services, provided, however, that no Cost shall be incurred without City's prior written consent. All Costs billed in any invoice shall be itemized and describe how the Cost was incurred and include copies of receipts where applicable. City shall have the right of reasonable review and approval of the Costs.

4. Consultant shall complete the Services or individual Services within the time frames agreed upon by City and Consultant from time to time during the course of this Agreement.

5. Consultant shall indemnify, defend and hold harmless City, its officers, Council-persons, employees, and agents from any and all claims, liabilities, expenses, and damages, including attorney's fees, arising out of or in any way connected with any act or omission by or on behalf of Consultant but only to the extent caused by the act or omission by or on behalf of Consultant. Notwithstanding the foregoing, to the extent that City provides Consultant with information, records, or other documents necessary or convenient for Consultant to complete the Services, Consultant may rely on the accuracy and completeness of same (except as otherwise advised by City in writing) and Consultant shall have no liability for same to the extent that they are incomplete or inaccurate.

6. Without limiting Consultant's obligations under Paragraph 5 of this Agreement, Consultant shall obtain and maintain during the life of this Agreement:

(a) Comprehensive general liability insurance coverage, including premises - operations, products/completed operations, broad form property damage and blanket contractual liability, in an amount not less than \$1 million per occurrence and automobile liability for owned, hired, and non-owned vehicles;

(b) Such workers compensation insurance as required by statute.

Consultant shall provide City with appropriate certificates of insurance and endorsements for all of the foregoing in which City, its officers, Council-persons, employees, and agents are named as additional insureds and specifically designating all such insurance as

"primary," excluding professional liability insurance, and providing further that same shall not be terminated nor coverage reduced without ten days prior written notice to City.

7. Consultant shall not assign its interest herein or any part thereof and any attempted assignment shall be void. All documents, reports, information, data, exhibits, maps, tables, charts, and all other matters generated by Consultant shall be the property of City and shall be delivered to City upon demand without additional costs or expense to City. In the event Consultant needs to access City files in the performance of its Services, Consultant shall first receive authorization from the City Manager to do so.

8. Either party may terminate this Agreement at any time by giving the other party ten days prior written notice, provided that in such event Consultant shall be entitled to payment for those services rendered through the date of termination, provided satisfactory to City.

9. All notices required to be given under this Agreement or by law shall be in writing and shall be deemed received by the party to whom directed if personally served or if faxed, emailed, or when deposited in the United States mail, postage prepaid, first class, faxed or emailed or addressed as follows: If to City, City Manager, 155 West Durian, Coalinga, California, 93210, Phone – 559-935-1533 x 114; or if to Consultant, Jameson Terrell, 1801 Sabovich Street #84C, Mojave, California 93501, Fax- (866) 582-2926, Email- jterrell@code3it.com. Any party may change its address or fax number by giving notice to the other party in the manner herein described.

10. Time is of the essence with regard to each covenant, condition and provision of this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. This Agreement constitutes the entire Agreement between the parties with regard to the subject matter herein and supersedes all prior oral and written agreements and understandings between the parties with respect thereto.

13. This Agreement may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties.

14. In the event any action or proceeding is instituted arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and actual costs.

15. This Agreement may be executed in counterparts and the respective signature pages for each party may thereafter be attached with the body of this Agreement to

constitute one integrated Agreement which is as fully effective and binding as if the entire document had been signed at one time.

16. Notwithstanding any provision to the contrary, this Agreement shall not become effective and shall not be binding as to any party until all of the parties have executed this Agreement.

17. Waiver by a party of any provision of this Agreement shall not be considered a continuing waiver or a waiver of any other provision, including the time for performance of any such provision.

18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns.

19. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and not be affected, impaired, or invalidated thereby.

20. City and Consultant each acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties. This Agreement shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the party so drafting the Agreement.

21. Consultant agrees to take all reasonable measures to protect City's computer systems from computer viruses including, without limitation, installation and maintenance of the latest versions of anti-virus software. Any computer virus existing as of the date of this Agreement may be removed by Consultant at City's request and at City's sole cost and expense.

22. Independent Contractor Status:

(a) This Agreement is entered into by both parties with the express understanding that Consultant will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the Consultant or any of its agents, employees or officers as an agent, employee or officer of City.

(b) Consultant agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of City. Subject to any performance criteria contained in this Agreement, Consultant shall be solely responsible for determining the means and methods of performing the specified services and City shall have no right to control or exercise any supervision over Consultant as to how the services will be

performed. As Consultant is not City's employee, Consultant is responsible for paying all required state and federal taxes. In particular, City will not:

1. Withhold FICA (Social Security) from Consultant's payments.
2. Make state or federal unemployment insurance contributions on Consultant's behalf.
3. Withhold state or federal income tax from payments to Consultant.
4. Make disability insurance contributions on behalf of Consultant.
5. Obtain unemployment compensation insurance on behalf of Consultant.

6. Make any contribution to any retirement plan for Consultant or Consultant's employees, including without limitation contributions to CalPERS.
7. Provide any other employment benefits to Consultant or Consultant's employees, including without limitation medical, dental, vision or other similar health insurance.

(c) Notwithstanding this independent contractor relationship, City shall have the right to monitor and evaluate the performance of Consultant to assure compliance with this Agreement.

23. **Compliance With Laws:** Consultant must provide services in accordance with applicable federal, state and local laws, regulations and directives. With respect to Consultant's employees, Consultant must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance and discrimination in employment.

24. **Assurance of Non-Discrimination:** Consultant shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

25. **No Third-Party Beneficiaries Intended:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

II

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

Ron Ramsey, Mayor
City of Coalinga, California

Approved as to form

City Attorney

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

**HIGH DESERT WIRELESS BROADBAND
COMMUNICATION LLC, a California Limited
Liability Company dba CODE 3 IT AND SYSTEM
INTEGRATION ("**Consultant**")**

By: _____
Jameson Terrell, CEO

Date: _____

By: _____
Jennifer Bader, CFO

EXHIBIT "A"

Consultant's Monthly Service Fee \$3600.00

Code3 IT will provide the City of Coalinga "Customer" with System Integrator consulting services (IT, Fixed Wireless, VOIP, IP Cameras, & Access Control). Under this agreement Code3 IT will bill the Customer a monthly flat fee of \$3600.00 for 40 hours of services per month. Hours above the monthly 40 will be approved by designated Customer's Management staff and bill at rates listed in Exhibit "B".

Code3 IT will have personnel onsite for 8 hours every Tuesday (Day of week is flexible). Usage of the monthly 40 hours between Customer's departments will be determined by Customer's Management staff (includes all City of Coalinga departments including but not limited to City Hall, Police Department, Fire Department, Public Works). 40 hours are based on the following: 52 Tuesdays per year for a total of 52 days annually @ 8 hours a day equals 416 hours divided by 12 months equals 34.67 hours a month add 5.33 hours for server and equipment maintenance per month.

Code3 IT understands this being a new form of services for the city it is our recommendation that we conduct a review of the hours with city management at the 90 day mark and again at the 180 day mark. If it's determined at that time the hours need to be adjusted then Code3 IT and the City will work on a mutually agreed upon amount of monthly hours.



Exhibit "B"
Service & Support Rate Card
 For City of Coalinga (Confidential)
 For more details, see the relevant Proposal

Type of Support	Annual Service Agreement
Desktop PC/software	\$95.00/hour
Phone/email Support	\$95.00/hour
Server/LAN/WAN Support	\$95.00 /hour
Security/Wireless/RF support	\$ 95.00 /hour
After Hours Service***	\$ 115.00 /hour
Emergency Service****	\$ 115.00 /hour
Minimum Billing for Phone and E-mail Support	15 minutes
Minimum Billing for On-Site Service	4 hrs
Travel Time for On-Site Service	Included
Priority Response Time for Emergencies to be billed at above rates	Included
Access to Network of Local IT Partners and Contractors	Included
System/ network Design	lump sum per project TBD in advance of project starting

***After Hours Service is outside of normal business hours (M-F, 8-5)

****Emergency Service is when on-site service is required with less than 8 hour notice