

City of Fayetteville Staff Review Form

2022-0692

Legistar File ID

8/16/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Keith Macedo

7/27/2022

INFORMATION TECHNOLOGY (170)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to authorize the purchase of a phone system recorder from Commercial Electronics Corp utilizing the Houston Galveston Area Council (H-GAC) contract #RP07-20 in the amount of \$139,125.90 plus applicable taxes.

Budget Impact:

4470.170.8170-5209.00	CIP																								
Account Number	Fund																								
04001.1	Telecommunication Systems Upgrades																								
Project Number	Project Title																								
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Budgeted Item?</td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">275,577.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">98,367.25</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">177,209.75</td> </tr> </table>	Budgeted Item?	Yes	Current Budget	\$	275,577.00			Funds Obligated	\$	98,367.25			Current Balance	\$	177,209.75	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 10%; text-align: right;">152,690.68</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td style="text-align: center;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">24,519.07</td> </tr> </table>	Item Cost	\$	152,690.68	Budget Adjustment	\$	-	Remaining Budget	\$	24,519.07
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V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF AUGUST 16, 2022

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Keith Macedo, IT Director
DATE: July 27, 2022
SUBJECT: Phone System Recorder Contract

RECOMMENDATION:

A resolution to authorize the purchase of a phone system recorder from Commercial Electronics Corp utilizing the Houston Galveston Area Council (H-GAC) contract #RP07-20 in the amount of \$139,125.90 plus applicable taxes.

BACKGROUND:

The current phone system recorder was purchased in 2012 and is no longer supported by the manufacturer. The recorder is used to record 9-1-1 calls, public safety radio traffic, phone lines for the Police Department, phone lines for the Utility Billing Call Center in City Hall and various administrative lines throughout the city as an “on demand” type recording.

DISCUSSION:

City staff reviewed a number of vendors to provide a complete recording solution that will fulfill the needs for recording Utility Billing Call Center phone recordings, and requirements of the Arkansas Public Safety Act for recording of Public Safety radio and phone calls. This review included multiple demos from various phone system recorder systems and reference checks from other cities. The selected product is from Higher Ground, who has been in business for over 40 years and is used by Bella Vista, Rogers, and Bentonville. H-GAC is a cooperative purchasing entity that competitively bids out various products and services for state and local government agencies. H-GAC holds hundreds of competitively solicited cooperative contracts that allow agencies to benefit from the shared purchasing power of a cooperative and reduces procurement overhead. Commercial Electronics Corp was awarded an H-GAC contract and is the current vendor for the City of Rogers and they are happy with their quality of support.

BUDGET/STAFF IMPACT:

The phone system recorder one-time cost \$139,125.90, plus applicable taxes, and is budgeted within the Telecommunication System Upgrades capital improvements project #04001.1. The initial purchase includes one (1) year of software maintenance, future annual maintenance is estimated at \$10,000 per year and is be budgeted within the annual Police operating budget.

Attachments: Staff Review form, H-GAC contract, Commercial Electronics quote, SOW

H-GAC

Houston-Galveston Area Council
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - HigherGround, Inc. - Public Services -- 20-00476

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and HigherGround, Inc., hereinafter referred to as the Contractor, having its principal place of business at 21201 Victory Blvd., Suite 105, Canoga Park, CA 91303.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 4: WHOLE AGREEMENT

The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 6: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Jul 01 2020 and ends Jun 30 2023. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 14, which shall be fully executed by both parties to this Agreement.

ARTICLE 7: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions.

ARTICLE 8: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 15 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 9: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 11: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 12: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or

off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 13: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 14: CHANGES AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.

ARTICLE 15: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default.

- A. *Convenience*
H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.

- B. *Default*

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

ARTICLE 16: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 17: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 18: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 19: FEDERAL COMPLIANCE

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s)

applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the Contractor's ability to perform services under this Agreement.

ARTICLE 21: INDEMNIFICATION AND RECOVERY

H-GAC's liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgements, and liens arising as a result of Contractor's negligent act or omission under this Agreement. Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Agreement.

ARTICLE 22: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the Contractor and an END USER, Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, is limited to the price of the particular products/services sold hereunder, and Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will Contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, loss of profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to

END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 23: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 24: JOINT WORK PRODUCT

This Agreement is the joint work product of H-GAC and the Contractor. This Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 25: DISPUTES

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

ARTICLE 26: CHOICE OF LAW: VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 27: ORDER OF PRIORITY

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

SIGNATURES:

H-GAC and the Contractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

HigherGround Inc.

DocuSigned by:
Signature *Terrance Ryan*
77EB4B3B5A114CA...

Name Terrance Ryan
Title President & CEO
Date 7/7/2020

H-GAC

DocuSigned by:
Signature *Chuck Wemple*
82EC270D5D61423...

Name Chuck Wemple
Title Executive Director
Date 6/24/2020

H-GAC

Houston-Galveston Area Council
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - HigherGround, Inc. - Public Services -

20-00476

SPECIAL PROVISIONS

Incorporated by attachment, as part of the whole agreement, H-GAC and the Contractor do, hereby agree to the Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

In addition to the whole Agreement, the following documents listed in order of priority are incorporated into the Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

ARTICLE 2: END USER AGREEMENTS ("EUA")

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement ("EUA") with the **Contractor** through this Agreement, and that the term of the EUA may exceed the term of the current **H-GAC** Agreement. **H-GAC's** acknowledgement is not an endorsement or approval of the End User Agreement's terms and conditions. **Contractor** agrees not to offer, agree to or accept from the **END USER**, any terms or conditions that conflict with those in **Contractor's** Agreement with **H-GAC**. **Contractor** affirms that termination of its Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Agreement, termination of this Agreement will disallow the **Contractor** from entering into any new EUA with **END USERS**. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any EUAs, surviving termination of this Agreement between **H-GAC** and **Contractor**.

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

Contractor shall provide its most favorable pricing and terms to H-GAC. If at any time during this Agreement, **Contractor** develops a regularly followed standard procedure of entering into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **Contractor** shall notify **H-GAC** within ten (10) business days thereafter, and this Agreement shall be deemed to be automatically retroactively amended, to the effective date of **Contractor's** most favorable past agreement with another entity. **Contractor** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER** as provided in its most favorable past agreement. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **Contractor** claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Agreement, does not constitute more favorable treatment, than **Contractor** shall, within ten (10) business days, notify **H-GAC** in writing, setting forth the detailed reasons **Contractor** believes the aforesaid offer is not in fact most favored treatment. **H-GAC**, after due consideration of **Contractor's** written explanation, may decline to accept such explanation and thereupon this Agreement between **H-GAC** and **Contractor** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties,

benefits, or terms to H-GAC and the END USER.

***EXCEPTION:** This clause shall not be applicable to prices and price adjustments offered by a bidder, Proposer or contractor, which are not within bidder's/proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 4: PARTY LIABILITY

Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the **END USER** in accord with the law and venue rules of the state of purchase. **Contractor** shall immediately notify **H-GAC** of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

Contractor shall sell its products to **END USERS** based on the pricing and terms of this Agreement. **H-GAC** will invoice **Contractor** for the applicable order processing charge when H-GAC receives notification of an END USER order. **Contractor shall remit to H-GAC** the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by **Contractor** based on this Agreement, including sales to entities without Interlocal Agreements, **Contractor** shall pay the applicable order processing charges to **H-GAC**. Further, **Contractor** agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an **H-GAC** Interlocal Agreement. **H-GAC** reserves the right to take appropriate actions including, but not limited to, Agreement termination if **Contractor** fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall **H-GAC** have any liability to **Contractor** for any goods or services an **END USER** procures from **Contractor**. At all times, **Contractor** shall remain liable to pay to **H-GAC** any order processing charges on any portion of the Agreement actually performed, and for which compensation was received by **Contractor**.

ARTICLE 7: LIQUIDATED DAMAGES

Contractor and H-GAC agree that Contractor shall cooperate with the END USER at the time an END USER purchase order is placed, to determine terms for any liquidated damages.

ARTICLE 8: INSURANCE

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, **Contractor** must have the following insurance and coverage minimums:

- a. **General liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General

Aggregate limit of at least two times the Single Occurrence limit.

Product liability insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.

Property Damage or Destruction insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as art of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

- b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. **Contractor** shall remain prepared to offer a PPB to cover any order if so requested by the **END USER**. **Contractor** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER's** purchase order.

ARTICLE 10: CHANGE OF STATUS

Contractor shall immediately notify **H-GAC**, in writing, of **ANY** change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written guidance to advise H-GAC if this Agreement shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Agreement.

ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING

All that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Agreement term, any required **Contractor** license is denied, revoked, or not renewed, **Contractor** shall be in default of this Agreement, unless the Texas Motor Vehicle

Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

Attachment A
HigherGround, Inc.
Record & Playback Systems
Contract No.: RP07-20

Offeror Name:	HigherGround, Inc.	
H-GAC Product Code	Item Description (Offeror may not change any description or add items)	Offered Price
DA-C004-007K-R0-V5	Solid-State Collector Device with Windows 10 and 40GB storage	\$ 1,236.88
DA-C048-000K-R5-V8	HG2U - Dual 2.4 GHz 6-Core E5-2620 processor, 64GB RAM, W2016, no Drives	\$ 7,491.54
DA-C048-155K-R1-V8	HG2U - 3.5 GHz Quad-Core E5-1620 processor, 32GB RAM, 1 TB RAID1, W2016	\$ 5,341.06
DA-C120-000K-R5-V8	HG4U - Dual 2.4 GHz 6-Core E5-2620 processor, 64GB RAM, W2016, no Drives	\$ 7,491.54
DA-C120-155K-R1-V8	HG4U - 3.5 GHz Quad-Core E5-1620 processor, 32GB RAM, 1 TB RAID1, W2016	\$ 5,341.06
DA-P048-155K-R1-V8	4U PSAP Chassis, 3.3GHz Intel Pentium G4400 Sklake, 16GB RAM, Windows 2016 Server, 1TB RAID 1	\$ 2,623.68
DA-CLBR-SWCR	Calibre Core Software	\$ 2,392.95
DA-NG911-CORE	NG Capture911 Core Software	\$ 2,345.09



Quote

Estimate# EST-1143

Commercial Electronics Corp

1318 N Brazos
 San Antonio, Texas 78207
 (210) 736-3119
 (800) 933-4077
 FID 74-1504166

Bill To

City of Fayetteville
 100 West Rock Street
 City of Fayetteville, AR 72701

Estimate Date : 26 Apr 2022
 Expiry Date : 31 Aug 2022
 Reference# : HGAC Contract # RP07-20
 Sales person : Bill Behar

Ship To

City of Fayetteville
 100 West Rock Street
 City of Fayetteville, 72701 AR

#	Item & Description	Qty	Rate	Amount
Phase I - Cisco full time recording All Cisco recording				
1	DA-NG911-CORE NG Capture911 Core Software	1.00 EA	2,345.14	2,345.14
2	DA-NG911-SWRL NG Capture911 Channel license.	20.00 EA	311.09	6,221.80
3	DA-CISC-CUCM Cisco UCM License Fee	1.00 EA	143.58	143.58
4	DA-NG911-CDMS Cisco Dual Media Stream Recording Integration	2.00 EA	2,866.81	5,733.62
Vesta IP recording				
5	DA-META-VESTA Vesta Metadata Integration	1.00 EA	2,388.21	2,388.21
6	DA-NG911-SWRL NG Capture911 Channel license.	8.00 EA	311.09	2,488.72
Support Software				
7	DA-FSAR-0001 ACD Free Seating - Auto Record	1.00 EA	2,388.16	2,388.16
8	DA-NGSC-SEAT Screen Capture Workstation License	8.00 EA	143.58	1,148.64

#	Item & Description	Qty	Rate	Amount
9	DA-REPL-0128 Replicate 128 Ports To Remote Server	1.00 EA	1,550.63	1,550.63
Phase I invoice amount				
10	PRICE INCLUDES INSTALLATION AND TAXES OF \$3,387.55	0.00	50,768.70	0.00
Phase II - Motorola p25 recording				
11	DA-TRAD-MP25 Motorola P25 w/ 1 AIS	1.00 EA	80,404.80	80,404.80
12	DA-P25-SWRL P25 Talk Group Recording License - First 250 Talk Groups, each	28.00 EA	325.45	9,112.60
Phase II invoice amount				
13	PHASE II PRICE INCLUDES INSTALLATION AND TAXES OF \$9,054.57.	0.00	102,572.87	0.00
Total for Section "A"				
14	Total for section "A"	0.00	114,513.34	0.00
Section "B" Cisco Concurrent recording - Phase I				
15	NG911-SWRL-CON NG911Concurrent Channel Recording License - requires Cisco BiB included in Phase I	25.00 EA	500.00	12,500.00
16	VOIP-PORT VoIP Per Port Interface	53.00 EA	0.00	0.00
Total For Section "B"				
17	Total for Section "B"	0.00	12,500.00	0.00
C. Other Allowances, Discounts, Trade-Ins, Freight, Make Ready or Miscellaneous Charges				
18	INSTALLCEC Phase I Installation, software configuration and training	1.00 EA	9,350.00	9,350.00
19	INSTALLCEC - 3rd party API PHASE II Installation - API Integration	1.00 EA	3,350.00	3,350.00
Items in Total 152.00			Sub Total	139,125.90
			Total Taxable Amount	139,125.90
			Arkansas (9.75%) (9.75%)	13,564.78
			Total	\$152,690.68

Notes

Pricing by HGAC - Contract # RP07-20

We are looking forward to your business.

Terms & Conditions

Terms: 50% down / 50% on delivery

We have been experiencing as much as a 6-week shipping delay on hardware items for existing orders. As such, our normal delivery expectation of "4 to 6 weeks after receipt of order" is adversely affected. We appreciate your understanding while we all adjust to our new economy.

All new parts and labor are warranted for one year from delivery and installation.

All hardware refresh ("HWRF-xxxx") parts must be covered under separate maintenance unless otherwise noted.

All repair parts and services are covered for 90 days.

Commercial Electronics Corp. Recording Systems Offered Post-warranty Services Summary

Tier I - The Software Only option is a 24-hour remote maintenance and software update plan. Most problems can be corrected quickly through remote access into the voice logging server. The system will also automatically report any malfunction directly to HigherGround and Commercial Electronics technical personnel who will then correct the problem perhaps even before it becomes evident to you. As new software features come available, they will be automatically downloaded to the system. (15% of list price of the system recording software and licensing or \$1,350.00 minimum)

Tier II - Exchange service includes the software maintenance above and defective board / module exchange of otherwise warrantable parts. Parts identified by the customer as defective will be pre-shipped by Commercial Electronics for immediate replacement. **On-site labor required to replace parts is provided by the customer.** (15% of list price of the entire recording system or \$1,800.00 minimum)

Tier III† - Standard service continues the same service as that provided during the warranty period; i.e. 24-hour monitoring*, remote* software updates and covers all system hardware as well. Most malfunctions are typically not hard equipment failures, and can be corrected by re-initializing programs remotely. However, should an otherwise warrantable failure occur to the hardware, this plan covers all parts, labor and mileage during normal business hours. On-Site service does not apply to peripheral equipment, including keyboard, monitor, mouse, UPS or other easily replaceable external modules. (Approx. 20% of list price of the recording system or \$2,100.00 minimum). Should after-hours service be required, the customer would be responsible for additional labor charges of \$217.50 per hour.

Tier IV† - 24-Hour service option (NOT AVAILABLE IN ALL AREAS) extends the standard service to full 24-hour response for equipment failures or other situations requiring an on-site technical presence. Standard repair service is provided from 8:00 a.m. to 4:30 p.m., Monday through Friday. 24-hour service covers repair actions necessary to restore primary operation after normal business hours. (\$750 + 25% of list price of the recording system or \$3,300.00 minimum).

* Hi-speed remote access is required for all Maintenance Agreements.

†CEC may use a third-party service provider for certain on-site services under Tier III and IV.

If no pre-paid maintenance coverage is chosen, Commercial Electronics will continue to provide service on a Time-and-Materials basis. Our current labor rate is \$225.00 per hour plus parts; applicable mileage for on-site service is \$1.50 per mile round-trip, from point of departure; after-hours service is billed at time and one half, \$337.50.

Customers under maintenance coverage receive a 10% discount on all out-of-warranty service parts and accessories.

STATEMENT OF WORK

For

City of Fayetteville AR

HigherGround Recording Solution

This Statement of Work identifies the general responsibilities of City of Fayetteville and Commercial Electronics Corp. (CEC) to ensure a successful installation of the HigherGround Voice Recording System. Please note that due to liability reasons, CEC personnel are not authorized to install, relocate, make connections to, troubleshoot, or adjust any equipment which is not purchased from, or otherwise supplied by CEC.

CEC will contact the City of Fayetteville one week after receipt of the order to discuss the installation. CEC will provide a Pre-Installation Checklist (PIC), which provides specific site-preparation detail. The PIC must be signed and returned to CEC. The installation will be scheduled after the completed checklists are received to allow sufficient time to coordinate shipping, travel, and other commitments.

Overview:

The HigherGround recording system installation will consist of the following:

- All new hardware and software for both chassis will be installed at the same time.
- Existing software licenses will be moved from existing system to the new hardware.
- Existing recordings will be moved to new hardware as City of Fayetteville requests.
- The remote installation should take no more than two (2) days, however we will assist longer if needed. There may be additional remote installation required to complete the installation.

DELIVERABLES:

CEC will deliver the following:

HARDWARE: - none

SYSTEM SOFTWARE:

- Phase I- Cisco IP Built-in-bridge recording
 - 20 full time IP recording
 - 25 concurrent IP recording
 - 8 Vesta IP recording
- Support Software
 - Free seating
 - Screen Capture
 - Replication
- Phase II – Motorola RoIP
 - 28 Talkgroup RoIP recording



The following software modules and functionality are included as a part of all HigherGround recording solutions:

NG 911 Voice Recorder: Digitally stores voice recordings in standard WAV format. Configurable to record continually, on a schedule, or record-on-demand.

Real-Time-Monitor: Authorized users can monitor telephone calls real-time.

Control Tower: A core component of all HigherGround solutions that allows you to monitor your system, manage recordings, retrieve data and delegate access from a single point of control. Control Tower also gives the ability to grant full or limited access based on individuals and/or departments with usage audits.

ANI/ALI Integration: The capture of ANI (Automatic Number Identification) and/or ALI (Automatic Location Information) data for greater detail in reports.

I'm Alive™: We monitor your systems, even when you don't. Our unique system is designed to let us know if your system is down. **I'm Alive** also monitors your network connections, PBX, servers or applications.

Dashboard - SMS Capture, Adjustable docking window framework that enable authorized users and dispatchers to customize layouts containing various categories of information.

Stand-Alone CD: Records incidents and playback software that can be burned onto portable CD securely locking recordings on the CD with pass code permissions

ACD Free-Seating Integration: Allows recordings to be associated to agents in a free-seating environment regardless of which station they are working from.

NG 911 Dispatcher Evaluator: Customizable agent grading forms for voice and screen evaluation during playback, or in real-time.

Replication: Makes a second copy of recordings to a recorder or a second server, either onsite or remote, through a WAN connection.

Redaction: Allows the user to redact certain parts of the recording while keeping the original recording in tack and .save as a wav file and/or save to the database for later retrieval.



STAGING:

City of Fayetteville will designate the hardware to stage the recording software. The hardware must be suitable to house the HigherGround software.

CEC technical personnel will install the recording software on provided hardware. See attached Hardware specifications.

A physical network port will need to be provide for each IP recording solution.

AUDIO CONNECTIVITY:

City of Fayetteville will ensure all audio sources to be recorded are available prior to installation by terminating them within sufficient proximity of the recorder location to accommodate placement and serviceability. A variety of standard termination methods are available and will be discussed during the site preparation phase. City of Fayetteville will provide labeling/documentation of which station is terminated on each cable pair.

DATA INTEGRATION:

City of Fayetteville will provide a live data feed via IP to the system along with documentation of the connection details (speed, data bits, stop bits and parity or IP address and port #) for each data source being integrated.

In all cases, City of Fayetteville will provide working access to the required data. Neither CEC nor HigherGround are responsible for delivery of data related functionality until working connections are established and proper data is delivered.

City of Fayetteville will provide via email a sample data stream with documentation for all data that will be used within the HigherGround system as soon as possible for evaluation prior to installation. Lack of a sample data stream may result in a delay of full implementation of the recording system functionality.

CEC will connect the data feed to the system and configure the system to populate the data in replay software GUI.

NETWORK ACCESS:

City of Fayetteville will provide a single LAN connection within sufficient proximity to the recorder location to accommodate placement and serviceability, if network operation is desired; i.e. replay, live monitoring, etc. The City of Fayetteville must establish network communications between, and provide proper permissions for, administrators, users groups and the central archive with the recording system.

CEC will ensure the system is accessible through the LAN and install shortcut icons on up to four workstations.

VERIFICATION / ACCEPTANCE:

CEC will verify that all functionality of the recording system, as listed in the DELIVERY section, is fully operational – ref. **Remote Installation Checklist**. CEC will note any discrepancies preventing verification, such as audio or data sources, network access or permissions, or other environmental factors outside the control of CEC.

City of Fayetteville will accept the system upon verification of all primary recording system functions. If certain functions cannot be verified due to connectivity issues outside the control of CEC which prevent full installation, the system will be deemed “Delivered and Accepted” at the time of initial installation for billing purposes. Payment terms of the original order will not be affected. Incomplete site preparation, including audio source wiring, and data delivery are examples of connectivity issues.

TRAINING:

CEC will provide three general levels of on-line training at the time of the installation. A brief overview of each is provided below. If necessary, multiple training sessions may be scheduled to accommodate shift personnel.

System Administrator - training will be done during installation and setup. Set up includes configuring channels, assigning usernames and passwords, installing desktop short cuts, establishing network access, and set up of alarm notifications, etc. City of Fayetteville’s IT personnel should be involved in this to the greatest extent possible.

Agent – training is provided immediately upon system set up. Training is generally very quick; most people already familiar with Windows will become expert users on retrieving, replaying, and saving calls in a matter of minutes. Training can be done at the individual desktops, or in a classroom environment, depending on the number of users.

Supervisor - training covers the reporting capabilities of the recording system. The level of data integration and the specific reporting modules ordered, (i.e. Agent Evaluator, ANI/ALI, Screen Capture, etc.) with the system will greatly affect *when* training is done and *how long* training will take.

Agent Evaluator- training modules require one- to two-hour sessions each. Agent Evaluator training mainly focuses on customization to meet your specific grading criteria and performance parameters, possibly incorporating any existing City of Fayetteville evaluation material. This training will take place 3-4 weeks after installation. This gives personnel time to use the system and become familiar with the basics.

CEC will provide refresher, specialized, and advanced training, as may be required after system installation, via remote webinars.



MAINTENANCE:

City of Fayetteville will maintain an environment conducive to computer equipment operation. City of Fayetteville will bear sole responsibility for ensuring the recording system is protected against infiltration by malicious software programs known as “viruses” or “worms”. City of Fayetteville will be responsible for eradication of same, and any cost associated with recovering lost or damaged data due to such malicious software programs.

During the first-year warranty period, CEC will provide 24-hour remote alarm monitoring, as well as recording software updates as available.

City of Fayetteville will make the recording system accessible to the service representative via remote access for scheduled updates and maintenance at times acceptable to both parties. Remote access may be provided by City of Fayetteville via modem line, TCP/IP connection or other method mutually acceptable to both parties.

For any reported problem with the recording system, City of Fayetteville will assist the technician by providing a complete and accurate description of the trouble symptoms over the phone, performing any routine front panel functions, including removing and reapplying main power to the unit as instructed, prior to CEC dispatching a technician for remote service.

All our technicians have been background checked by numerous other agencies by providing driver license number, address, date of birth., etc., and we can do likewise for City of Fayetteville if they want to perform background check too. Additionally, we have individually and collectively signed Nondisclosure agreement for specific agencies when requested. However, CEC personnel do not handle Criminal Justice information.