

CITY OF HOBBS
SOLE SOURCE/EMERGENCY

TO: CPO

FROM: Fire

DATE: 11/8/17

CHECK ONE: SOLE SOURCE EMERGENCY PURCHASE

ITEM(S)/SERVICE(S) TO BE PURCHASED: G2 FSA Annual Service Agreement

Award To (If new vendor make sure address is on this form): US Digital Designs

Phone/Fax No. 877-551-8733/
480-290-7896

Point of Contact

COST: \$ 45,639.90

JUSTIFICATION FOR SOLE SOURCE OR EMERGENCY PURCHASE:

Service agreement for current G2 Alerting System installed at all 4 fire stations.

Account No. 01-0220-42210

Prepared By: Donna Ankerholz

Department Approval:

CPO: Dolly S. Raulo

See back of form for further information.

City of Hobbs Sole Source Procurement Policy

SOLE SOURCE: If, after conducting a good-faith review of available sources, the using department or office make the determination that there is only one source for the required goods, services, or construction, then it is to submit a completed sole source approval form to Purchasing. If approved by the Purchasing Office, a sole-source procurement may be made in accordance with Sec. 13-1-126.

New Mexico State Statutes 1978 - Annotated Chapter 13 Public Purchases and Property

Section 13-1-126: A contract may be awarded without competitive bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office make a determination, after conducting a good-faith review of available sources and consulting the using agency, that there is only one source for the required service, construction or item of tangible personal property. The state purchasing agent or a central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the state agency or a local public body. A contract for the purchase of research consultant services by institutions of higher learning constitutes a sole source procurement.

City of Hobbs Emergency Procurement Policy

If the using department of office makes a determination that there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions, the appropriate officer in the purchasing office is to be contacted for verbal authorization. If so approved, the emergency procurement may be made as directed by said officer, but is to be limited to those items of the duty of the using department or office to document emergency purchase approval and maximize such competition as is practicable in the circumstances, and comply with section 13-1-127.

New Mexico State Statutes 1978 - Annotated Chapter 13 Public Purchases and Property

13-1-127 Emergency Procurements:

- A. The state purchasing agent, a central purchasing office or a designee of either may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurement shall be made with competition as is practicable under the circumstances. A written determination of the basis for the emergency procurement and for the selection of the particular contractor shall be submitted with requisition requesting payment of the related services, etc. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.
- B. An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:
 - 1. the functioning of government;
 - 2. the preservation or protection of property; or
 - 3. the health or safety of any person

US DIGITAL DESIGNS

Quote

1835 E Sixth Street, Suite 27
 Tempe, Arizona 85281
 Fax # 480-290-7896 Phone # 877-551-USDD
 E-mail: sales@usdd.com

Date	Quote #
13-Sep-17	17-HBNM-001

This quote is effective until 31 Oct 2017

Name / Address
Hobbs Fire Department Attn: Chris Davis, Battalion Chief 301 E. White Hobbs, New Mexico 88240
cdavis@hobbsnm.org

ALL AMOUNTS QUOTED ARE IN US DOLLARS		Terms	Rep	Project
		Net 30		
Item	Description	Qty	Cost	Total
SrvcAgrmt_Rene wal	Renewal/Service Fee for G2 FSA annual service agreement (lapsed Agreement - 7/1/2016 through 6/30/2017)	1	\$ 22,259.16	\$ 22,259.16
SrvcAgrmt_Annl	Annual Service Fee (1 July 2017 through 30 June 2018) Base Amount: \$259,786.00	1	\$ 23,380.74	\$ 23,380.74
Thank you for your business			Total	\$ 45,639.90

US DIGITAL DESIGNS



SERVICE AGREEMENT

This Service Agreement (“Agreement”) is made by and between US Digital Designs, Inc. (“USDD”), with its principal place of business at 1835 East Sixth Street, Suite 27, Tempe, Arizona 85281, and the following entity (“Customer”):

Hobbs Fire Department

Attn: _____

301 E. White Street

Hobbs, NM 88240

Phone: _____

Email: _____

1. **Recitals.** The Customer requires USDD to provide software maintenance and hardware repair services for its USDD fire station alerting system. USDD has agreed to service the Customer’s System (as defined below) pursuant to the terms, conditions, and limitations of this Agreement. In consideration of the forgoing, and for other good and valuable consideration, the parties hereby agree to the terms set forth in this Agreement.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

- a. “Additional Services” shall have the meaning set forth in Section 7, below;
- b. “Application or App” shall mean the *Phoenix G2 FSA Mobile Application* for iOS and Android mobile devices.
- c. “Commencement Date” shall be **July 1, 2017**;
- d. “Hardware” means a physically tangible electro-mechanical system or sub-system and associated documentation provided to Customer by USDD, provided

however, Hardware shall not include any televisions or monitors manufactured by third parties;

- e. "Emergency Support" means telephone access for Customer's "System Administrator" (as defined below) to USDD's senior staff and engineers in the event of a Mission Critical Failure.
- f. "Mission Critical Failure" means a failure in the materials, workmanship or design of the System that causes any fire station served by the System to be incapable of receiving dispatches through all communications paths, provided however, that any such failure caused by operator error, internet or telephony service outages, misuse or neglect of the System or any cause outside of USDD's direct control does not constitute a Mission Critical Failure.
- g. "Services" shall have the meaning set forth in Section 3, below;
- h. "Software" means software programs, including embedded software, firmware, executable code, linkable object code, and source code, including any updates, modifications, revisions, customization requested by Customer, copies, documentation, and design data that are licensed to Customer by USDD;
- i. "System" means all Hardware and Software purchased by Customer either directly from USDD or authorized USDD Reseller under any contract, purchase order, or arrangement that is used exclusively by Customer as part of its fire station alerting system, provided however, that the term "System" specifically excludes any components, hardware, or software provided by third parties, including without limitation Customer's computers, lap tops, computer peripherals, monitors, televisions, routers, switches, operating systems, computer programs, applications, internet and network connections, and any other parts or items not provided to Customer directly by USDD;
- j. "Term" means the period of time during which this Agreement is in effect, including the Initial Term and all Additional Terms, as defined in Section 9, below.

3. **USDD Scope of Services.** During the Term of this Agreement, USDD agrees to provide Hardware repair service and Software updates and maintenance for the System (collectively the "Services"). Subject to all other terms and conditions contained in the Agreement, the Services shall include the following:

- a. Technical phone support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;
- b. Remote access support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;

- c. Emergency Support, available 24 hours per day, for Customer's System Administrator in the event of a Mission Critical Failure;
- d. Updates for all System Software, as and when released by USDD;
- e. Twenty-four (24) App licenses per each ATX Station Controller that is part of the System and covered under this Agreement. Use of the App shall be strictly governed by the *Mobile Application End User's Agreement* that must be accepted by each user at the time the software is downloaded.
- f. Repair of defective or malfunctioning Hardware (not otherwise covered under the USDD warranty applicable to the Hardware) at USDD's principal place of business; and
- g. Ground shipping for the return of repaired Hardware.

4. **Hardware Repairs.** If a Hardware component requires repair and a valid claim is made during the Term, at its option, USDD will, at its principal place of business, either (1) repair the Hardware at no charge, using new parts or parts equivalent to new in performance and reliability or (2) exchange the Hardware with a product that is new or equivalent to new in performance and reliability and is at least functionally equivalent to the original Hardware. When a product or part is exchanged, any replacement item becomes the Customer's property and the replaced item becomes the property of USDD. Parts provided by USDD in fulfillment of the Services must be used in the System to which this Agreement applies. Customer shall be responsible for and bear all risks and costs of shipping any Hardware to USDD for repair. USDD shall be responsible for and bear all risks and costs of returning any Hardware to Customer after repair or replacement. Replacement Hardware will be returned to Customer configured as it was when the Hardware was originally purchased, subject to applicable updates.

5. **Claims.** Prior to requesting Services, Customer is encouraged to review USDD's online help resources. Thereafter, to make a valid claim hereunder, Customer must contact USDD technical support and describe the problem or defect with specificity. The first such contact must occur during the Term. USDD's technical support contact information can be found on USDD's web site: <http://stationalerting.com/service-support/>. Customer must use its best efforts to assist in diagnosing defects, follow USDD's technical instructions, and fully cooperate in the diagnostic process. Failure to do so shall relieve USDD of any further obligation hereunder.

6. **Limitations.** The Services specifically and expressly exclude any repair, software installation, update, or other service that is necessitated by the Customer's misuse or neglect of the System, damage arising from Customer's failure to follow instructions relating to the product's use, cosmetic damage, including but not limited to scratches, dents and broken plastic on ports, alterations or repairs to the System made by any person other than an authorized USDD representative, failure of environmental controls or improper environmental conditions, modification to alter functionality or capability without the written permission of USDD, use with non-USDD products, any damage caused by fire, flood, vandalism, terrorism, riot, storm, lightning, or other acts of nature or civil unrest. The Services shall not include disassembly or

re-installation of any Hardware at Customer's site. The Services shall not include the repair of any Hardware that is determined to be obsolete or irreparable in USDD's sole discretion. The Services shall not include repair or replacement of televisions or monitors manufactured by third parties. Repair or replacement of such components shall be subject exclusively to the manufacturer's warranty, if any. USDD shall not be liable to provide Services at any time when Customer is in breach of any obligation to USDD under this Agreement or any other contract.

7. **Additional Services by USDD.** Except for the Services, all other acts or performances requested or required of USDD by Customer ("Additional Services") will be charged at USDD's then current rates and will be in addition to all other fees and charges payable by Customer under this Agreement. Additional Services shall include (without limitation) Customer's use of Emergency Support in the absence of a Mission Critical Failure and any Services provided by USDD on a rush basis or during hours not included in the description of the Services set forth above. Customer shall pay all invoices for Additional Services within 30 days. Invoices remaining unpaid for more than 30 days shall bear interest at 18% per annum.

8. **Customer Facilitation of Services.** In order to facilitate USDD's delivery of the Services, Customer will appoint a person from its staff to consult with USDD and provide such information, access, description, and guidance as is necessary for USDD to perform its duties hereunder ("System Administrator"). The Customer will ensure that the System Administrator is reasonably available to USDD. USDD may rely on the direction of the System Administrator in performing its duties hereunder, including without limitation, direction to provide Additional Services. The Customer may replace the person serving as its System Administrator only upon prior written notice to USDD. Without limiting the foregoing, Customer will be responsible for the following:

- a. The provision of VPN or other means for remote access to the System for remote access support;
- b. The procurement and/or provision of all computers, peripherals, and consumables (collectively "Customer Equipment"), including printer paper, toner and ink necessary for the operation, testing, troubleshooting, and functionality of the of the System;
- c. Any configuration and regular maintenance that is normally undertaken by the user or operator as described in the operating manual for the Customer Equipment, including the replacement of UPS batteries as necessary;
- d. Providing a stable means of data transmission between the System Gateway and each fire station serviced by the System necessary for the installation, testing and functionality of the of the System; such means of data transmission may include, but is not limited to, TCP/IP, data modems, leased lines, radios, etc;
- e. The correct use of the System in accordance with USDD's operating instructions; and
- f. The security and integrity of the System.

9. **Ongoing Service Term, Renewal and Termination.** The initial term of this Agreement shall begin on the Commencement Date and shall continue for one year ("Initial Term"). Unless previously terminated as set forth in this Section, Customer may renew this agreement for four (4) additional one-year terms (each an "Additional Term") by giving written notice of Customer's intent to renew at least 30 days prior to the expiration of the Initial Term or any Additional Term, as the case may be, or by timely payment of the "Annual fee" (as defined below). This Agreement may be terminated by either party by providing written notice of termination to the other party at least 30 days prior to the expiration of the Initial Term or any Additional Term. USDD may terminate this Agreement for any breach hereof upon 30 days written notice. The notice shall specify the nature of the breach. If Customer fails to cure the breach within 30 days, this Agreement shall be terminated. Notwithstanding the foregoing, USDD may terminate this Agreement immediately upon non-payment of any sum due from Customer under this Agreement or any other contract. Upon termination of this Agreement, all sums previously paid to USDD shall be nonrefundable.

10. **Annual Fees.** On or before the first day of the Initial Term and each Additional Term (each a "Due Date"), Customer shall pay USDD an Annual Fee in advance for the Services and to be delivered hereunder (the "Annual Fee"). The Annual Fee shall be the product of the total cumulative sales price of all Hardware, Software, and other tangible goods or equipment provided to Customer at any time under any circumstances ("Base Amount"), multiplied by .09. Customer acknowledges and agrees that the Base Amount is cumulative and will increase by the purchase price of all Software, Hardware and Services purchased in the future. USDD may calculate the Base Amount, determine the Annual Fee and invoice Customer therefore 45 days prior to the subject Due Date. Customer shall pay the Annual Fee on or before the Due Date or 30 days after the date of the invoice, whichever is later. Invoices remaining unpaid shall bear interest at 18% per annum. Annual Fees are nonrefundable.

11. **Limited Warranty.** USDD warrants that the Services performed hereunder will be carried out with due care and attention by qualified personnel. Defective Hardware subject to repair hereunder will be repaired to good working order. **TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, USDD SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS.** If USDD cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of this express warranty and to repair or replacement service as determined by USDD in its sole discretion. No reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired. **EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE EXTENT PERMITTED BY LAW, USDD IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY**

BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODWILL; LOSS OF REPUTATION; and LOSS OF, DAMAGE TO OR CORRUPTION OF DATA. USDD IS NOT RESPONSIBLE FOR ANY INDIRECT LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING PROGRAMMING OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH USDD PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. USDD disclaims any representation that it will be able to repair any hardware under this warranty or make a product exchange without risk to or loss of the programs or data stored thereon.

12. **Arbitration.** If the Parties are unable to informally resolve any dispute arising out of this Agreement either during or after its Term, including the question as to whether any particular matter is subject to arbitration, the parties agree to submit the matter to binding arbitration. In the event the parties have not agreed upon an arbitrator within 20 days after either party has demanded arbitration in writing, either party may file a demand for arbitration with the Phoenix regional office of the American Arbitration Association ("AAA") and a single arbitrator shall be appointed in accordance with the then existing Commercial Arbitration Rules of the AAA. Discovery may be conducted either upon mutual consent of the parties, or by order of the arbitrator upon good cause being shown. In ruling on motions pertaining to discovery, the arbitrator shall consider that the purpose of arbitration is to provide for the efficient and inexpensive resolution of disputes, and the arbitrator shall limit discovery whenever appropriate to insure that this purpose is preserved. The dispute between the parties shall be submitted for determination within 60 days after the arbitrator has been selected. The decision of the arbitrator shall be rendered within 30 days after the conclusion of the arbitration hearing. The decision of the arbitrator shall be in writing and shall specify the factual and legal basis for the decision. Upon stipulation of the parties, or upon a showing of good cause by either party, the arbitrator may lengthen or shorten the time periods set forth herein for conducting the hearing or for rendering a decision. The decision of the arbitrator shall be final and binding upon the parties. Judgment to enforce the decision of the arbitrator, whether for legal or equitable relief, may be entered in any court having jurisdiction thereof, and the parties hereto expressly and irrevocably consent to the jurisdiction of the Maricopa County Superior Court of Arizona for such purpose. The arbitrator shall conduct all proceedings pursuant to the then existing Commercial Arbitration Rules of the AAA, to the extent such rules are not inconsistent with the provisions of this Section. In the event a dispute is submitted to arbitration pursuant to this Section, the prevailing party shall be entitled to the payment of its reasonable attorneys' fees and costs, as determined by the arbitrator. Each of the parties shall keep all disputes and arbitration proceedings strictly confidential, except for disclosures of information required by applicable law or regulation.

13. **Force Majeure.** Except for Customer's duty to pay sums due hereunder, neither party will be liable for any act, omission, or failure to fulfill its obligations under this Agreement if such act, omission or failure arises from any cause beyond its control including acts of nature, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, governmental action after the

date of this Agreement, fire communication line failures, power failures, earthquakes or other disasters. The party unable to fulfill its obligations due to Force Majeure will immediately:

- a. Notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure; and
- b. Use all responsible endeavors to avoid or remove the cause and perform its obligations.

14. **Headings and Usage.** The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this Agreement. When the context of the words used in this Agreement indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity or entities actually referred to require.

15. **Waiver.** No failure or delay, in any one or more instances, to enforce or require strict compliance with any term of this Agreement shall be deemed to be a waiver of such term nor shall such failure or delay be deemed a waiver of any other breach of any other term contained in this Agreement.

16. **Governing Law; Parties in Interest.** This Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the successors and assigns of the parties.

17. **Execution in Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. The date of this Agreement shall be the latest date on which any party executes this Agreement.

18. **Entire Agreement.** This Agreement contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof. This Agreement may not be amended, altered, or changed except by the express written agreement of the parties.

19. **Joint Effort.** This Agreement has been drafted through the joint efforts of the parties and shall not be construed against any party on the basis that such party is the drafter of this Agreement or any term thereof.

20. **Savings Clause.** In the event any part, provision, or term of this Agreement is deemed to be illegal or unenforceable, this Agreement shall be construed as if such unenforceable part, provision, or term had not been included herein. Such illegal or unenforceable part, provision, or term shall be deemed revised to the extent necessary to cure its defect and such revision and the remainder of the Agreement shall be and remain in full force and effect.

21. **Images and Testimonials.** During the term of this Service Agreement, Customer agrees that USDD may take, make or obtain images, pictures, photographs, commentary, and video and

audio recordings of Customer's System and property and reproductions of the same in whole or in part, either digitally or in any other medium now known or later discovered (collectively "Images"). In addition, USDD may request Customer to provide testimonials, endorsements, feedback or other written or oral comments concerning Customer's experience with the System (collectively "Testimonials"). Customer consents to USDD's use of such Images and Testimonials for verification, training, and promotional purposes in USDD's sole discretion and agrees that all such Images and Testimonials shall remain the property of USDD and may be used and exploited in any media format.

22. **Customer Representative.** The undersigned representative of Customer hereby represents and warrants that s/he has the authority to bind Customer and that the execution, delivery and performance by Customer under this Agreement will not violate the provisions of any law, rule, regulation or policy, and will not conflict with or result in the breach or termination or constitute a default under any agreement or instrument to which Customer is a party.

Hobbs Fire Department:

US Digital Designs, Inc.:

By: _____
Name: _____
Its: _____
Date: _____

By _____
DOMINIC MAGNONI, Vice President
Date: _____