

Isabel Hernandez

From: Janet Monteros
Sent: Tuesday, August 17, 2010 4:46 PM
To: Isabel Hernandez; Josefina Vasquez
Cc: Alicia Vera
Subject: RE: DVR Maintenance Agreements for SO - KK-10-370 (Jail Annex) and KK-10-371 (HQ)
Attachments: k10371 Addendum SO HQ DVR Service.doc

COUNTY LEGAL REVIEW FORM

KK-10-10-371

Contract Description:

COUNTY ATTORNEY ACTION**

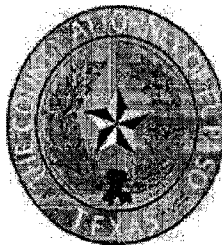
****Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

_____ Approved as to Form as Submitted
_____X_____ Approved as to Form with Amendments/Modifications/Reservations Noted Below*
_____ Not Approved

*1) See attached addendum

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Janet Monteros
Assistant County Attorney



JANET I. MONTEROS, ASSISTANT COUNTY ATTORNEY

DATE
08/03/10

Phone: _____
Attention: _____

[illegible]

Authorized Representative of ASC, Inc.

TERMS AND CONDITIONS

- A. Signal Receiving and Notification Service shall be provided by ASC, Inc. if the reverse side of this Agreement includes a charge for Signal Receiving and Notification Service. In the event an alarm signal registers at ASC, Inc.'s Central Station, ASC, Inc. shall endeavor to notify the appropriate Police or Fire Department and the designated representative of the Customer. In the event a burglar alarm signal or fire signal registers at ASC, Inc.'s Central Station, ASC, Inc. at its sole discretion, may endeavor to contact the Customer's premises by telephone to verify that the alarm is not false. Failing to contact the Customer promptly or questioning the nature of the response received upon such contact, ASC, Inc. shall endeavor to notify the appropriate Police Department or Fire Department. In the event a supervisory signal or trouble signal registers at ASC, Inc.'s Central Station, ASC, Inc. shall endeavor to notify promptly the designated representative of the Customer.
- In the event ALARM VERIFICATION SERVICE is being furnished, it is mutually understood and agreed that equipment is being installed which, as to certain locations in the premises, will require the activation of two sensing devices, or a second activation of a single alarm sensor, or a continuous alarm event from a single sensor, in order for an alarm signal to be transmitted.
- It is mutually agreed that the Customer assumes full responsibility for the operation of any and all bypass or switch units provided for disconnecting or reconnecting the alarm sounding and/or transmitting equipment at Customer's premises.
- The Customer represents that any vault to be protected by ASC, Inc. hereunder by sound or vibration detector systems has the minimum construction characteristics prescribed by the Underwriters' Laboratories, Inc.
- The Customer agrees to test any ultrasonic, microwave, capacitance or other electronic equipment designated on the Schedule of Protection prior to setting the alarm system for closed periods, according to procedures prescribed by ASC, Inc., and to notify ASC, Inc. promptly in the event that such equipment fails to respond to the test.
- Communication Facilities- A. AUTHORIZATION - Customer authorizes ASC, Inc. to make requests for information, service, orders or equipment in any respect on behalf of Customer to a telephone company (the "Telephone Company") or other entity providing facilities or services for transmission of signals under this Agreement. B. DIGITAL COMMUNICATOR - If connection to the ASC, Inc.'s Central Station is to be by Digital Communicator, the Customer agrees to provide a connection via a registered telephone jack to a telephone channel, required for the ASC, Inc. equipment. Such connection shall be electrically first before any other telephone or Customer equipment, and shall be within 10 feet of the ASC, Inc. Control Panel. If requested by the Customer, ASC, Inc. shall provide such connection at the cost of the Customer. The Customer understands that if a digital communicator is installed under this agreement, it uses standard telephone lines as the transmission mode of sending signals and eliminates the need for dedicated telephone facilities and the large cost increases frequently imposed on such facilities. Customer also understands that ASC, Inc. does not receive signals when the transmission mode is or becomes non-operational and that signals from the digital communicator cannot be received if the transmission mode is cut, interfered with, or otherwise damaged. C. RADIO INTERFACE - If connection to the ASC, Inc. Central Station is to be by any radio frequency method, such as cellular or private radio, then Customer understands due to the very nature of radio waves that there may be times when the system is unable to secure, maintain or retransmit an alarm signal and, thus, the utilization of an additional communications means is recommended.
- B. Warranty: If direct sale is indicated on the reverse side, any part of the system, including the wiring, installed under this Agreement which proves to be defective in material or workmanship within ninety (90) days of the date of completion of installation will be repaired or replaced at ASC, Inc.'s option with a new or functionally operative component. Labor and material required to repair or replace such defective components will be free of charge for a period of ninety (90) days following the completion of the original installation. This Warranty does not apply to the conditions listed below and in the event Customer calls ASC, Inc. for service under the Warranty and upon inspection by ASC, Inc.'s representative it is found that one of these conditions has led to the inoperability or apparent inoperability of the system, a charge will be made for the service call of ASC, Inc.'s representative whether or not he actually works on the system. Should it actually be necessary to make repairs to the system due to one of the "Conditions" not covered by Warranty, a charge will be made for such work at ASC, Inc.'s then applicable rates for labor and material. Service will be furnished by ASC, Inc. during ASC, Inc.'s normal working hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, except holidays.
- Conditions not covered by Warranty: A) Damage resulting from accidents, acts of God, alteration, misuse, tampering or abuse. B) Failure of the Customer to properly follow operating instructions provided by ASC, Inc. at time of installation or at a later date. C) Adjustments necessitated by misalignment of CCTV cameras, improper adjustment of monitor brightness and contrast tuning dials or insufficient light on the area viewed by the camera(s). D) Trouble due to interruption of commercial power or to the phone service.
- THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PURCHASER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY AND ALL LOSSES OR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING ASC, INC.'S NEGLIGENCE, SHALL BE REPAIR OR REPLACEMENT AS SPECIFIED ABOVE. ASC, INC. SHALL IN NO EVENT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY NATURE, INCLUDING WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY OR DAMAGES TO PROPERTY AND HOWEVER OCCASIONED, WHETHER ALLEGED AS RESULTING FROM BREACH OF WARRANTY OR CONTRACT BY ASC, INC. OR NEGLIGENCE OF ASC, INC. OR OTHERWISE.
- C. Maintenance - If the reverse side of this agreement indicates this service is being provided, ASC, Inc. will, upon Customer's request, provide ordinary maintenance and repair of such system due to normal wear and tear and bear the expense thereof. The expense of all extraordinary maintenance and repair due to alterations in the Customer's premises, alterations of the system made at the request of the Customer, or made necessary by changes in the Customer's premises, damage to the premises or to the alarm system, or to any cause beyond the control of ASC, Inc., shall be borne by the Customer. The Customer agrees to furnish any necessary electric current through the Customer's meter and at the Customer's own expense with an outlet within 10 feet of the ASC, Inc. Control Panel. It is mutually agreed that the work of installation and ASC, Inc.'s repairs of the system shall be performed between ASC, Inc.'s normal working hours of 8:00 A.M. to 5:00 P.M. Monday through Friday, except holidays.
- EXCLUSIONS: Maintenance on the following devices will be provided only on a time and material basis: (1) window foil, (2) security screens, (3) any exterior mounted devices, (4) PROM (Programmable Read Only Memory), (5) Conditions not covered by warranty listed above in paragraph B.
- It is understood and agreed that ASC, Inc.'s obligation relates to the maintenance solely of the specific protection system, and that ASC, Inc. is in no way obligated to maintain, repair, replace, service, operate or assure the operation of any device or devices of the Customer or of others not installed by ASC, Inc.
- If not contracted prior to the expiration of the Warranty, ASC, Inc. will enter into a Maintenance Service Contract only after inspecting the system and making any necessary repairs or replacements to the system at a charge to the Customer for labor and/or material at ASC, Inc.'s then prevailing rates.
- INSPECTIONS - ASC, Inc. will perform the number of Alarm system inspections only as specified on the reverse side of this Agreement between ASC, Inc.'s normal working hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, except holidays and subject to the exclusions set forth above for maintenance.
- D. IT IS UNDERSTOOD THAT ASC, INC. IS NOT AN INSURER, THAT INSURANCE, IF ANY, SHALL BE OBTAINED BY THE CUSTOMER AND THAT THE AMOUNTS PAYABLE TO ASC, INC. HEREUNDER ARE BASED UPON THE VALUE OF THE SERVICES AND THE SCOPE OF LIABILITY AS HEREIN SET FORTH AND ARE UNRELATED TO THE VALUE OF THE CUSTOMER'S PROPERTY OR PROPERTY OF OTHERS LOCATED IN CUSTOMER'S PREMISES. CUSTOMER AGREES TO LOOK EXCLUSIVELY TO CUSTOMER'S INSURERS TO RECOVER FOR INJURIES OR DAMAGE IN THE EVENT OF ANY LOSS OR INJURY OR RELEASES AND WAIVES ALL RIGHT OF RECOVERY AGAINST ASC, INC. ARISING BY WAY OF SUBROGATION. ASC, INC. MAKES NO GUARANTEE OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, THAT THE SYSTEM OR SERVICES SUPPLIED, WILL AVERT OR PREVENT OCCURRENCES OR THE CONSEQUENCES THEREFROM, WHICH THE SYSTEM OR SERVICE IS DESIGNED TO DETECT. IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY PROXIMATELY RESULT FROM FAILURE ON THE PART OF ASC, INC. TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER. THE CUSTOMER DOES NOT DESIRE THIS CONTRACT TO PROVIDE FOR FULL LIABILITY OF ASC, INC. AND AGREES THAT ASC, INC. SHALL BE EXEMPT FROM LIABILITY FOR LOSS, DAMAGE OR INJURY DUE DIRECTLY OR INDIRECTLY TO OCCURRENCES, OR CONSEQUENCES THEREFROM, WHICH THE SERVICE OR SYSTEM IS DESIGNED TO DETECT OR AVERT; THAT IF ASC, INC. SHOULD BE FOUND LIABLE FOR LOSS, DAMAGE OR INJURY DUE TO A FAILURE OF SERVICE OR EQUIPMENT IN ANY RESPECT, ITS LIABILITY SHALL BE LIMITED TO A SUM EQUAL TO 10% OF THE ANNUAL SERVICE CHARGE OR \$1,000, WHICHEVER IS GREATER, AS THE AGREED UPON DAMAGES AND NOT AS A PENALTY, AS THE EXCLUSIVE REMEDY; AND THAT THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY IF LOSS, DAMAGE OR INJURY, IRRESPECTIVE OF CAUSE OR ORIGIN, RESULTS DIRECTLY OR INDIRECTLY TO PERSON OR PROPERTY FROM PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS IMPOSED BY THIS CONTRACT OR FROM NEGLIGENCE, ACTIVE OR OTHERWISE, STRICT LIABILITY, VIOLATION OF ANY APPLICABLE CONSUMER PROTECTION LAW OR ANY OTHER ALLEGED FAULT ON THE PART OF ASC, INC., ITS AGENTS OR EMPLOYEES. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST ASC, INC. MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREFOR. IF THE CUSTOMER DESIRES ASC, INC. TO ASSUME A GREATER LIABILITY, ASC, INC. SHALL AMEND THIS AGREEMENT BY ATTACHING A RIDER SETTING FORTH THE AMOUNT OF ADDITIONAL LIABILITY AND THE ADDITIONAL AMOUNT PAYABLE BY THE CUSTOMER FOR THE ASSUMPTION BY ASC, INC. OF SUCH GREATER LIABILITY PROVIDED, HOWEVER, THAT SUCH RIDER AND ADDITIONAL OBLIGATION SHALL IN NO WAY BE INTERPRETED TO HOLD ASC, INC. AS AN INSURER. IN THE EVENT ANY PERSON, NOT A PARTY TO THIS AGREEMENT, SHALL MAKE ANY CLAIM OR FILE ANY LAWSUIT AGAINST ASC, INC. IN ANY WAY RELATING TO THE EQUIPMENT OR SERVICES THAT ARE THE SUBJECTS OF THIS AGREEMENT, INCLUDING FOR FAILURE OF ITS EQUIPMENT OR SERVICE IN ANY RESPECT, CUSTOMER AGREES TO INDEMNIFY AND HOLD ASC, INC. HARMLESS FROM ANY AND ALL SUCH CLAIMS AND LAWSUITS INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY'S FEES. IF THIS AGREEMENT PROVIDES FOR A DIRECT CONNECTION TO A MUNICIPAL POLICE OR FIRE DEPARTMENT OR OTHER ORGANIZATION, THAT DEPARTMENT OR OTHER ORGANIZATION MAY INVOKE THE PROVISIONS HEREOF AGAINST ANY CLAIMS BY THE CUSTOMER DUE TO ANY FAILURE OF SUCH DEPARTMENT OR ORGANIZATION.
- E. IF CCTV EQUIPMENT IS INVOLVED, Customer will provide adequate illumination under all operational conditions for the proper operation of the closed circuit television camera and will provide the 110AC power supply where required as well as shelf or desk space for monitors.
- F. A Direct Connection to the Municipal Police, Fire Department or other Agency shown shall be provided if the reverse side of this Agreement provides for such direct connection service. It is mutually understood and agreed that signals transmitted hereunder will be monitored in Municipal Police and/or Fire Departments or other location and that the personnel of such Municipal Police and/or Fire Departments or other location are not the agents of ASC, Inc. nor does ASC, Inc. assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals.
- G. At ASC, Inc.'s option, the Customer may be charged for any false alarm caused by the customer or for any unnecessary service run.
- H. CANCELLATION - If Central Station or Direct Connection is furnished, this Agreement may be terminated at the option of ASC, Inc., if ASC, Inc.'s Central Station is substantially damaged by fire or catastrophe, or if ASC, Inc. is unable to have connections or privileges necessary to transmit signals between the Customer's premises, ASC, Inc.'s Central Station or the Municipal Fire or Police Department or other agency and ASC, Inc. shall not be liable for any damages or subject to any penalty as a result of such termination. It is understood and agreed that this Agreement may be terminated by ASC, Inc. in the event that the Customer fails to follow any recommendations ASC, Inc. may make for the repair or replacement of the defective parts of his system not covered under the Warranty or Maintenance Service Contract or in the event that the Customer's failure to follow the operating instructions provided by ADT results in an undue number of false alarms or if the premises in which the system is installed are so modified or altered after installation as to render continuation of service impractical.
- I. ASC, INC. ASSUMES NO LIABILITY FOR DELAYS IN INSTALLATION OF THE EQUIPMENT OR FOR THE CONSEQUENCES THEREFROM, HOWEVER CAUSED, OR FOR THE INTERRUPTION OF SERVICE OR FOR THE CONSEQUENCES THEREFROM DUE TO STRIKES, RIOTS, FLOODS, ACTS OF GOD OR ANY CAUSES BEYOND THE CONTROL OF ASC, INC. AND WILL NOT BE REQUIRED TO SUPPLY SERVICE TO THE CUSTOMER WHILE INTERRUPTION OF SERVICE DUE TO ANY SUCH CAUSE SHALL CONTINUE.
- J. This Agreement is not assignable by the Customer except upon written consent of ASC, Inc. first being obtained. ASC, Inc. shall have the right to assign this agreement or to subcontract any of its obligations under this agreement without notice to Customer.
- K. If any of the provisions of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- L. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE CUSTOMER AND ASC, INC. IN EXECUTING THIS AGREEMENT, CUSTOMER IS NOT RELYING ON ANY ADVICE OR ADVERTISEMENT OF ASC, INC., CUSTOMER AGREES THAT ANY REPRESENTATION, PROMISE, CONDITION, INCITEMENT OR WARRANTY, EXPRESS OR IMPLIED, NOT INCLUDED IN WRITING IN THIS AGREEMENT SHALL NOT BE BINDING UPON ANY PARTY, AND THAT THE TERMS AND CONDITIONS HEREOF APPLY AS PRINTED WITHOUT ALTERATION OR QUALIFICATION, EXCEPT AS SPECIFICALLY MODIFIED IN WRITING. THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL GOVERN NOTWITHSTANDING ANY INCONSISTENT OR ADDITIONAL TERMS AND CONDITIONS OR ANY PURCHASE ORDER OR OTHER DOCUMENT SUBMITTED BY THE CUSTOMER.

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**ADDENDUM TO SECURITY PROPOSAL/AGREEMENT OF
ADVANCED SECURITY CONTRACTORS, INC.
(HQ DVR SERVICE)**

This Service Agreement ("Agreement") is made and entered into on this ____ day of August, 2010, by and between the County of El Paso ("County"), a political subdivision of the State of Texas, and Advanced Security Contractors, Inc. ("ASC"), a Texas Corporation, The following provisions are added by agreement of the parties. To the extent that any provisions in the main body of the agreement conflict with the provisions of this addendum, this addendum shall control.

1. Page One of the Security Proposal/Agreement the automatic renewal and liquidated damages provisions are hereby deleted;
2. Page One of the Security Proposal/Agreement Sentence 2 referencing the term of the agreement is deleted in its entirety and the following substituted in its place: "This agreement may be renewed only by written agreement of the parties."
3. Page One under Customer Acceptance, the sentence "In accepting this Proposal, Customer agrees to the terms and conditions contained herein including those on the reverse side" is modified to read as "In accepting this Proposal Customer agrees to the applicable terms and conditions contained herein as well as those in this document, the accompanying addendum."
4. Page Two, Paragraph B shall include "Operating Instructions of the DVR shall be provided by ASC to County personnel both in writing and in oral form;"
5. Page Two, Paragraph D shall be revised to reflect a four (4) year statute of limitations for contracts;
6. Page Two, Paragraph D, the fourth sentence is deleted in its entirety in accordance with the laws and Constitution of the State of Texas, which prohibit subdivisions of the state from indemnifying other parties as well as deleting the provision regarding payment of all damages, expenses, costs and attorneys fees;
7. Page Two, Paragraph J deleted in its entirety and the following substituted: "The Agreement may not be assigned by either party without the written consent of the other;"
8. The following statement shall be in added to the Agreement: Customer may terminate this Agreement at the end of any fiscal year during the term of this

agreement if sufficient funds intended to satisfy the payment obligations of this agreement are not included in the adopted budget of El Paso County for the next fiscal year.

IN WITNESS WHEREOF, the parties execute this agreement on the ____ day of _____, 2010.

ATTEST:

EL PASO COUNTY

County Clerk

By: _____
Anthony Cobos
County Judge

APPROVED AS TO FORM:

Advanced Security Contractors, Inc.

Assistant County Attorney

By: _____
John Wever
Sales Manager, Authorized
Representative of Advanced Security
Contractors, Inc.