

DOC # 0211320

12/12/2007 11:13 AM

Official Record

Recording requested By
EUREKA COUNTY

Eureka County - NV

Mike Rebaleati - Recorder

Fee: Page 1 of 7
RPTT Recorded By: FES
Book- 0467 Page- 0214



0211320

Eureka, Nevada

December 6, 2007

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
AND CONCESSION FOR USE OF PUBLIC FACILITIES**

This is a contract between Eureka County, a political subdivision of the State of Nevada, acting by and through its Board of Eureka County Commissioners (hereinafter referred to as County); and Above All Communications, d.b.a. VoxTerra Communications, a Nevada limited liability company, Nevada corporation number E0404382006-2 (hereinafter referred to as "AAC"), and replaces in all respects the contract recorded April 5, 2007, document #0208457, dated March 27, 2007.

WHEREAS, N.R.S. 244.187 authorizes the County to provide adequate, economical and efficient services to the inhabitants of the County and to promote the general welfare, by displacing or limiting competition in concessions on, over, or under property owned or leased by County; and

WHEREAS, the County owns towers in Eureka and Diamond Valley, and public buildings in those areas and in Crescent Valley suitable for placement of wireless internet equipment; and

WHEREAS, AAC is a wireless internet company ready, willing, and able to market and provide its wireless internet service to the County's inhabitants but needs areas to place hardware and the County's towers and public buildings suit this need; and

WHEREAS, AAC owns the following equipment they install, including - access points, antennas, battery back-ups, cables, client receivers (CPE), routers, switches, computers, DSL modems, bandwidth aggregator, monitoring and bandwidth appliance (NetEqualizer) and any additional equipment deemed necessary to provide Internet access; and

WHEREAS, AAC is granted concessions and the infrastructure to provide Internet services in exchange for the installation, networking and provision of equipment to service County facilities. Included with each Internet connection is ongoing management and technical support;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. CONTRACT TERM:

This contract shall be effective from December 6, 2007, to March 27, 2012, unless terminated sooner by either party as described in paragraph F.

B. AAC'S RESPONSIBILITIES:

In return for the opportunity to provide wireless internet services to the inhabitants of Eureka County, AAC agrees:

1. AAC shall comply with all applicable state, county, and federal licenses, authorizations, permits, qualifications and certifications required by statute, ordinance, law, or regulation to provide the services required by this contract, including but not limited to the Communications Assistance for Law Enforcement Act.
2. AAC shall require all customers to only use AAC's wireless internet services for lawful purposes, and to prohibit the transmission of any material in violation of any local, state, federal or international law or regulation. Any unlawful use of the Internet by AAC's customers shall be the customers full liability and responsibility.
3. AAC shall provide twenty four (24) hour, seven (7) day per week monitoring of all its equipment.
4. AAC shall install and maintain its equipment so as not to cause injury to persons, the public towers and buildings, and surrounding area.

5. AAC shall install and provide at no charge internet access at the following locations for use by the County and the public:
 - a. Eureka County Airport - two wireless internet connections
 - b. Opera House - commercial grade bandwidth access, to include networking of two management computers with internet access and two commercial grade ValuePoint Access Points for WiFi access during conventions and special functions
 - c. Diamond Valley Fire Department - one wireless internet connection
 - d. County Maintenance Facility - one wireless internet connection
 - e. County Swimming Pool - one wireless internet connection
 - f. Future Eureka Fire Department - one wireless internet connection
 - g. Future Devil's Gate Fire Department - one wireless internet connection
6. AAC shall provide secondary, redundant bandwidth for the Eureka County Courthouse, to include backup internet service to the Eureka County Airport, Diamond Valley Fire Department, County Maintenance Facility, County Swimming Pool, and future Fire Department buildings.
7. AAC shall provide and install (according to a fee schedule to be provided to County and updated whenever a rate change is imposed) internet access equipment including backhaul, access points, antennas and client radios to the residents of Eureka County.
8. AAC shall provide a receipt to its fee based customers at least once each month.
9. AAC shall provide technological support to its customers, to include the customers listed in paragraph 5, above.

C. AAC OMBUDSMAN:

For purposes of customers and County resolving conflicts with AAC's provision of services, or billing to customers, AAC shall make available the name, address, phone number, and e-mail address of an ombudsman to handle the conflicts:

Donald Meldrum: dmeldrum@expint.net
c/o Above All Communications, LLC
295 11th Street
Ely, NV 89315
(775) 237-4070

D. COUNTY'S RESPONSIBILITIES:

In return for AAC's services to the public and to the County, the County agrees:

1. County shall allow exclusive use by AAC of the County's communication towers, and the exteriors of public buildings in those areas and in Crescent Valley for placement of wireless internet equipment; provided that placement is acceptable to the County in all respects, and County reserves the right to allow its agents and other public entities access and use of the towers and buildings at the County's discretion.
2. County shall allow AAC to connect to 110 volt power sources that are presently available at the locations described in the previous paragraph, provided the connection is made safely and in a manner acceptable to the County.
3. County shall allow AAC to connect and install required equipment for their Internet Service in the server room at the Eureka County Courthouse.
4. County shall provide two ValuePoint Access Points for installation at the Opera House by AAC pursuant to paragraph B.5.b.
5. County shall provide bandwidth necessary to permit the services AAC will make available by this contract.
6. County shall provide public IP addresses as necessary.
7. County shall permit AAC access to its equipment placed on structures owned by County at all times for purposes of maintenance, upkeep and repair.

8. County agrees not to contract with any other wireless internet provider for a service similar to what is provided for by this contract while this contract is in force, and provide AAC an opportunity to respond to any concerns County may have regarding the continuation of this contract.
9. County shall work with AAC to preserve and protect the frequency or channel used by AAC to provide Internet Service.

E. NOTICE:

All notices or other communication shall be in writing to the addresses of the parties listed at the end of this contract unless otherwise stated. Service may be by hand delivery, mail, e-mail, or fax.

F. CONTRACT TERMINATION:

1. This contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause, if at least thirty (30) working days notice is provided; however, if County experiences any difficulty with the County's systems, caused by AAC's hardware and equipment, County may immediately disconnect AAC's hardware and equipment and promptly thereafter provide AAC notice of this action. County will make every reasonable effort to contact AAC and give AAC an opportunity to resolve the problem, unless a public safety emergency exists, before disconnecting any equipment.
2. AAC shall, before October 1, 2008, remove its hardware from the County's water tanks and install it on the County's communication towers.

G. WINDING UP AFFAIRS UPON TERMINATION:

In the event of contract termination, the parties agree the provisions of this paragraph survive termination:

1. AAC shall remove its equipment and restore all County towers, structures, and buildings to the same condition, normal wear and tear excepted, they were in at the time the equipment was installed, promptly, but in no less than thirty (30) working days.

H. LIMITED LIABILITY:

The County does not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply. AAC's tort liability shall not be limited.

I. INDEMNIFICATION:

To the fullest extent permitted by law, AAC shall indemnify, hold harmless and defend, the County from and against all liability, claims, actions, damages, losses and expenses, including, without limitations, reasonable attorney's fees and costs, arising out of any alleged negligent or wilful acts or omissions of AAC, its officers, employees and agents.

J. INDEPENDENT CONTRACTOR:

AAC is associated with the County only for the purposes and to the extent specified in this contract, and in respect to performance of the contracted services pursuant to this contract, AAC is and shall be an independent contractor and, subject only to the terms of this contract, shall have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this contract. Nothing contained in this contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer/employee or principal/agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of AAC or any other party. AAC shall be solely responsible for, and the County shall have no obligation with respect to: income tax withholding, industrial insurance, group insurance, and unemployment compensation. AAC shall indemnify and hold the County harmless from, and defend the County against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of any such taxes or fees.

K. INSURANCE:

AAC must carry policies of insurance in amounts specified below and pay all taxes and fees for the coverage:

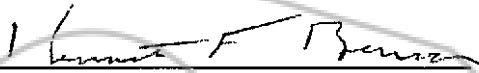
\$1,000,000.00 - personal injury
\$1,000,000.00 - any one accident
\$1,000,000.00 - property damage

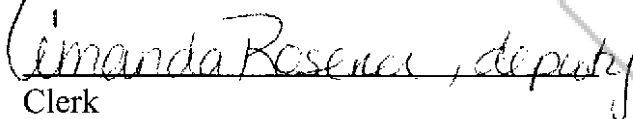
Any insurance or self insurance available to the County shall be excess of and non-contributing with the insurance required from AAC. AAC's insurance policies shall apply on a primary basis. AAC shall provide the County with renewal or replacement evidence of

insurance no less than thirty (30) days before the expiration or replacement of the required insurance. Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds, and County shall be named as additional insured.


L. GOVERNING LAW:

This contract and the rights and obligations of the parties shall be governed by the laws of the State of Nevada. The parties consent to the jurisdiction of the Seventh Judicial District Court in Eureka, Nevada for enforcement of this contract.


Chairman of the Board
Eureka County Commission

Attest:

Clerk

Above All Communications, LLC:


Donald Meldrum: dmeldrum@expint.net

NOTICES SHALL BE SENT TO:

County: Eureka County Commissioners
P.O. Box 677
Eureka, NV 89316
(775) 236-5262

AAC: Donald Meldrum
P.O. Box 1876
Winnemucca, NV 89446
Office (775) 237-4070
Don (775) 304-8111

