

**SOLE SOURCE CONTRACT
BETWEEN CITY OF ROANOKE, VIRGINIA AND
SMART COMMUNICATIONS HOLDING, INC.
FOR MAILGUARD SYSTEM**

REFERENCE: SOLE SOURCE PSS#17-018

This Contract # AQUAB is dated July 25, 2017, between the City of Roanoke, Virginia, a Virginia Municipal Corporation, hereinafter referred to as the "City" or "Owner", and Smart Communications Holding, Inc., a Florida Corporation located at 4522 W. North B St., Tampa, Florida, hereinafter referred to as the "Contractor" authorized to transact business in Virginia.

WITNESSETH:

WHEREAS, Contractor has been awarded this nonexclusive Contract by the City for furnishing all equipment, materials, goods, labor and services necessary to provide a complete two-way, closed circuit, secure electronic messaging system and associated work in accordance with this Contract and the documents referred to herein, all such items or services also being referred to hereinafter as the Work or Project.

NOW, THEREFORE, THE CITY AND THE CONTRACTOR AGREE AS FOLLOWS:

SECTION 1. WORK TO BE PERFORMED AND DOCUMENTS.

For and in consideration of the money hereinafter specified to be paid by the City to the Contractor for the Work provided for in this Contract to be performed by the Contractor, the Contractor hereby covenants and agrees with the City to fully perform the services, provide any materials called for to complete the Work called for by this Contract, as detailed in the Scope of Work (Exhibit 1), in a good and workmanlike manner in accordance with this Contract and the documents referred to herein in order to fully and properly complete this Contract within the time stipulated, time being made of the essence for this Contract. It is also agreed by the parties hereto that the documents to this Contract consist of this Contract and the following documents listed below (Contract Documents), all of which are and constitute a part of this Contract as if attached hereto or set out in full herein, viz:

1. Scope of Services (Exhibit 1).
2. Insurance Requirements (Exhibit 2).
3. Smart Communications Holding, Inc. Confidential Information and Non-Disclosure
4. Sole Source No. PSS#17-018, which is incorporated herein by reference.

The parties agree that if there are any differences between the provisions of the above referenced documents, the provisions of the City documents and this Contract will control over any Contractor supplied documents or information.

SECTION 2. NOT USED.

SECTION 3. TERM OF CONTRACT.

A. Installation and Testing Period

From the date of this Contract, through August 31, 2017, Contractor shall install the equipment, materials, and goods necessary to provide a complete two-way closed circuit, secure, electronic messaging system in accordance with Section 1 of this Contract and in accordance with the schedule set forth in Exhibit 1 attached to this Contract. Contractor shall also test all systems and confirm with City that the system conforms to the requirements of this Contractor on or before August 31, 2017.

B. Term of Service.

1. The term of this Contract shall be for three (3) year, from **September 1, 2017, through August 31, 2020**, at which time it will terminate, unless sooner terminated pursuant to the terms of the Contract or by law or unless extended as set forth herein at the option of the City.
2. By mutual agreement of the parties, the contract may be renewed for up to **two (2) additional one (1) year periods** of any combination thereof. If either party wants to renew the Contract that party shall give a written request to renew to the other party at least sixty (60) days of the expiration of the original term or any renewal term of the Contract. The party receiving such request shall either accept or reject in writing such request within thirty (30) days of receipt of that request, provided, however, if the party receiving the request to renew fails to respond within fifteen (15) days, the request to renew shall be deemed to be rejected, unless the parties mutually agree otherwise.
3. All terms and conditions shall remain in force for the term of this Contract and for any renewal period unless modified by mutual agreement of both parties. Prices shall not be increased during the initial term of this Contract.

SECTION 4. NOT USED.

SECTION 5. SALES TAX EXEMPTION.

The City is exempt from payment of State Sales and Use Tax on all tangible personal property purchased or leased for the City's use of consumption. The Virginia Sales and Use Tax Certificate of Exemption number is 217-074292-9.

SECTION 6. FREE ON BOARD, RISK OF LOSS, AND TITLE.

All prices include F.O.B Destination, inside delivery to the Contractor's Licensed Area unless otherwise noted in this Contract. The risk of loss from any casualty, regardless of cause, shall be on the Contractor until the items have been delivered to City personnel making the request and accepted by the City. The risk of loss shall also be on the Contractor during the return of any items to the Contractor. Title to the items shall pass to the City upon receipt and acceptance of such items by the City.

SECTION 7. INSPECTION.

The City shall have a reasonable time after receipt of items and/or services and before payment to inspect all items and/or products for conformity to this Contract. If all or some of the items and/or services delivered to the City do not fully conform to the provisions hereof, the City shall have the right to reject and return such nonconforming items, at the sole cost of the Contractor.

SECTION 8. WARRANTY OF MATERIAL AND WORKMANSHIP.

Contractor agrees that all items provided to the City will be new, or if an item is refurbished or remanufactured, such item will meet the industry standards for such item and the item shall be clearly labeled as refurbished or remanufactured, and that all such items include such warranties as may be provided by Virginia law together with any warranties provided by the manufacturer of the item. Contractor shall use reasonable commercial efforts to assist the City in processing warranty claims against a manufacturer. Contractor also agrees that the services provided under this Contract shall be completed in a professional, good and workmanlike manner, with the degree of skill and care that is required by like contractors in Virginia. Further, Contractor warrants that such services shall be completed in accordance with the applicable requirements of this Contract and shall be correct and appropriate for the purposes contemplated in this Contract. Contractor agrees that Contractor shall repair or replace, at Contractor's sole expense, and to the satisfaction of the City, any items, material, equipment, or part of the item that is found by the City to be defective or not in accordance with the terms of this Contract.

SECTION 9. PAYMENTS TO OTHERS BY CONTRACTOR.

The Contractor agrees that Contractor will comply with the requirements of Section 2.2-4354 of the Virginia Code regarding Contractor's payment to other entities and the Contractor will take one of the two actions permitted therein within 7 days after receipt of amounts paid to Contractor by the City. Contractor further agrees that the Contractor shall indemnify and hold the City harmless for any lawful claims resulting from the failure of the Contractor to make prompt payments to all persons supplying the Contractor equipment, labor, tools, or material in connection with the work provided for in the Contract. In the event of such claims, the City may, in the City's sole discretion, after providing written notice to the Contractor, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if the City determines it to be appropriate to do so.

SECTION 10. HOLD HARMLESS AND INDEMNITY.

Contractor shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Contractor's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Contractor agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

SECTION 11. COMPLIANCE WITH LAWS AND REGULATIONS, AND IMMIGRATION LAW.

Contractor agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Contractor further agrees that Contractor does not and shall not during the performance of its Contract; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 12. INDEPENDENT CONTRACTOR.

The relationship between Contractor and the City is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Contractor shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. Contractor shall be responsible for causing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subcontractors. Contractor will be responsible for all actions of any of its subcontractors, and that they are properly licensed.

SECTION 13. REPORTS, RECORDS, AND AUDIT.

Contractor agrees to maintain all books, records, electronic data, and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. The City, its authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to request, examine, copy, and/or audit any such materials during the term of the Contract and such retention period, upon prior written notice to Contractor. This includes the City's right to audit and/or examine any of the Contractor's documents and/or data as the City deems appropriate to protect the City's interests.

SECTION 14. INSURANCE REQUIREMENTS.

Contractor and any of its subcontractors involved in this Contract shall maintain the insurance coverage's set forth in Exhibit 2 to this Contract and provide the proof of such insurance coverage as called for in Exhibit 2, including workers' compensation coverage regardless of the number of Contractor's employees. Such insurance coverage shall be obtained at the Contractor's sole expense and maintained during the life of the Contract and shall be effective prior to the beginning of any work or other performance by the Contractor under this Contract. Additional insured endorsements, if required, must be received by the City within 30 days of the execution of this Contract or as otherwise required by the City's Risk Manager.

SECTION 15. DEFAULT.

If Contractor fails or refuses to perform any of the terms of this Contract, including poor services, work or materials, the City may, by written notice to Contractor, terminate this Contract in whole or in part. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default, and Contractor shall be liable for any damages to the City resulting from Contractor's default. The City further reserves the right to immediately obtain such work or services from other entities in the event of Contractor's default.

SECTION 16. NONWAIVER.

Contractor agrees that the City's waiver or failure to enforce or require performance of any term or condition of this Contract or the City's waiver of any particular breach of this Contract by the Contractor extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the Contractor and does not bar the City from requiring the Contractor to comply with all the terms and conditions of the Contract and does not bar the City from asserting any and all rights and/or remedies it has or might have against the Contractor under this Contract or by law.

SECTION 17. FORUM SELECTION AND CHOICE OF LAW.

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions. Venue for any litigation, suits, and claims arising from or connected with this Contract shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Contract voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

SECTION 18. SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall not be affected and all other terms and conditions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. NONDISCRIMINATION.

- A. During the performance of this Contract, Contractor agrees as follows:
- i. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. Contractor in all solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- B. Contractor will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 20. DRUG-FREE WORKPLACE.

- A. During the performance of this Contract, Contractor agrees to (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SECTION 21. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

SECTION 22. ASSIGNMENT.

Contractor may not assign or transfer this Contract in whole or in part except with the prior written consent of the City, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Contractor from any of the covenants or undertakings contained in this Contract and the Contractor shall remain liable for the Contract during the entire term thereof.

SECTION 23. CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Contract or notice from the City to the Contractor that the City disputes the amount of Contractor's request for final payment. However, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Contractor. A written decision upon any such claims will be made by the City Manager or the City Manager's designee (hereafter City Manager) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the City Manager. The Contractor may not institute legal action prior to receipt of the City's decision on the claim unless the City Manager fails to render such decision within 120 days from submittal of Contractor's claim. The decision of the City Manager shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Va. Code. Failure of the City to render a decision within said 120 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the City's failure to render a decision within said 120 days shall be Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to

Section 2.2 - 4365 of the Va. Code has been established for contractual claims under this Contract.

SECTION 24. SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Contract shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 25. HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

SECTION 26. COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 27. AUTHORITY TO SIGN.

The persons who have executed this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the party for whom they are signing.

SECTION 28. NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To City:	City of Roanoke Sheriff/Jail Attn: David Bell, Major Deputy Sheriff 340 Campbell Avenue SW Roanoke, Virginia 24016
Facsimile:	(540) 853-5353
Phone:	(540) 853-2056
Email:	david.bell@roanokeva.gov
Copy to:	City of Roanoke Purchasing Division Attn: Purchasing Manager Noel C. Taylor Municipal Building, Room 202 215 Church Avenue, SW Roanoke, Virginia 24011
Facsimile:	(540) 853-1513
Phone:	(540) 853-2871
Email:	purchasing.contracts@roanokeva.gov

If to Contractor: Smart Communications Holding, Inc.
Attn: James Logan, Vice President
4522 West North B Street
Tampa, Florida 33609
Phone: (888) 253-5178
Email: jim.logan@smartjailmail.com

Notices shall be deemed to be effective one day after sending if sent by overnight courier or three (3) days after sending if by certified mail, return receipt requested.

SECTION 29. PROTECTING PERSONS AND PROPERTY.

The Contractor expressly undertakes both directly and through its subcontractors, to take every reasonable precaution at all times for the protection of all persons and property at the location of the Work or in the vicinity of the Work or that may be affected by the Contractor's operation in connection with the Work. The Contractor will maintain adequate protection of all Contractor's Work to prevent damage to it and shall protect the City's property from any injury or loss arising in connection with this Contract and to protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Contractor agrees to be responsible for the entire Work and will be liable for all damages to the Work, including, but not limited to, damages to any property of the City or to any property in the vicinity or adjacent to the Work. All damage with respect to the Work caused by vandalism, weather, or any other cause, other than resulting from the sole negligence of the City shall be the responsibility of the Contractor. Contractor shall also be responsible for any inventory shortages and discrepancies of any type.

SECTION 30. CONTRACT SUBJECT TO FUNDING.

This Contract is subject to funding and/or appropriations from federal, state, and/or local governments and/or agencies. If any such funding is not provided, withdrawn, or otherwise not made available for this Contract, the Contractor agrees that the City may terminate this Contract on seven (7) days written notice to Contractor, without any penalty or damages being incurred by the City. Contractor further agrees to comply with any applicable requirements of any grants and/or agreements providing such funding.

SECTION 31. SUSPENSION OR TERMINATION OF CONTRACT.

1. If either party defaults in the performance of any obligation under this Contract, then the non-defaulting Party must give written notice to the defaulting Party specifically describing the nature of default. The defaulting Party shall have thirty (30) days after receipt of notice of default to cure. If it is not reasonable to cure the default within 30 days, then the right to cure period shall be extended to a reasonable cure period as long as the defaulting Party has made good faith attempts to cure the default. Upon termination of this Agreement, Contractor shall remove all hardware and software Systems except for the cabling and conduit which shall become the property of the City. Contractor shall have the right to immediately terminate this Contract if the City breaches the Confidentiality or Non-Disclosure provisions of this Contract set forth in Exhibit 3 of this Contract.
2. Should the Contract be terminated or work is stopped not due in any way to the fault of the Contractor, the Contractor shall be entitled to no payments from the City.

3. The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and City may pursue any and all such rights and remedies against Contractor as it deems appropriate.

SECTION 32. ETHICS IN PUBLIC CONTRACTING.

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Va. Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Contract.

SECTION 33. COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA.

Contractor shall comply with the provisions of Virginia Code Section 2.2-4311.2, as amended, which provides that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. The City may void the Contract if the Contractor fails to remain in compliance with the provisions of this section.

SECTION 34. OWNERSHIP OF REPORTS AND DOCUMENTS.

Contractor agrees that all reports and any other documents (including electronic data) prepared for, obtained in connection with, and/or required to be produced in connection with this Contract shall be delivered by the Contractor to the City and all such items shall become the sole property of the City. The Contractor agrees that the City shall own all rights of any type in and to all such items, including but not limited to copyrights and trademarks, and the City may reproduce, copy, and use all such items as the City deems appropriate, without any restriction or limitation on their use and without any cost or charges to the City from Contractor. Contractor hereby transfers and assigns all such rights and items to the City. Contractor further agrees Contractor will take any action and execute any documents necessary to accomplish the provisions of this Section. The Contractor also warrants that Contractor has good title to all materials, equipment, documents, and supplies which it uses in the Work or for which it accepts payment in whole or in part.

SECTION 35. PROTECTION ON SITE.

The Contractor expressly undertakes both directly and through its subcontractor, to take every reasonable precaution at all times for the protection of all persons and property which may come on the jobsite or be affected by the Contractor's operation in connection with the Work.

SECTION 36. SAFETY AND HEALTH PRECAUTIONS.

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety and health precautions and programs in connection with the Work, including but not limited to provision of appropriate sanitation facilities, if applicable.

SECTION 37. DAMAGE TO THE WORK.

The Contractor shall have charge of and be solely responsible for the entire Work and be liable for all damages to the Work including, but not limited to any property in the vicinity of the Work, until its completion and acceptance by the City.

SECTION 38. DEFECTIVE WORK.

The Contractor agrees it shall repair or replace, at Contractor's sole expense, and to the satisfaction of the City, any work, material, equipment, or part that is found, by the City, to be defective.

SECTION 39. ENTIRE CONTRACT.

This Contract, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

WITNESS:

SMART COMMUNICATIONS HOLDING, INC.

_____ By _____

Printed Name and Title

Printed Name and Title

WITNESS:

CITY OF ROANOKE, VIRGINIA

_____ By _____
Simone Knowles, Purchasing Manager

Printed Name and Title

Approved as to form:

Daniel Callaghan, City Attorney

Approved as to Execution:

Daniel Callaghan, City Attorney

IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

WITNESS:

SMART COMMUNICATIONS HOLDING, INC.

Major David Bell

By

[Signature]

MAJOR DAVID BELL

Printed Name and Title

JAMES PLOGAN V-P

Printed Name and Title

CITY OF ROANOKE, VIRGINIA

WITNESS:

[Signature]

By

[Signature] 8/17/17

Simone Knowles, Purchasing Manager

Monica Cole, Purch. Supv.

Printed Name and Title

Approved as to form:

[Signature]

Daniel Callaghan, City Attorney

Timothy Spencer, Sr. A. City Attorney

Approved as to Execution:

[Signature]

Daniel Callaghan, City Attorney

Timothy R. Spencer, Senior Asst. City Attorney

**EXHIBIT 1
TO CONTRACT
BETWEEN CITY OF ROANOKE, VIRGINIA AND
SMART COMMUNICATIONS HOLDING, INC.
FOR MAILGUARD SYSTEM**

REFERENCE: SOLE SOURCE PSS#17-018

SCOPE OF SERVICES

The services, work, and/or items that the Contractor shall provide in a timely and proper manner in accordance with the Contract include, but are not necessarily limited to, the following:

1. Contractor will provide at no cost to City a fully functional electronic messaging system for the inmates of the City Jail Facilities. Contractor is exclusively responsible, at its sole cost, for providing all the hardware kiosks, the software to include the operating systems and application software and all applicable software licenses, and all networking requirements needed for operation of the system.
2. Contractor will provide at no cost to City the labor for the installation of the electronic messaging system.
3. Contractor will provide at no cost to City the labor, hardware, and software needed for the continued operating, maintaining, and networking of the electronic messaging system.
4. Contractor is responsible for all the costs and future costs associated with any modification, reconfiguration, or upgrade of the electronic messaging system at the City Jail Facilities. These costs do not include the costs of the actual electrical power.
5. Contractor will maintain records for a period of seven (7) years from the date the record is made.
6. Upon request, Contractor will provide City with copies of the requested record for inspecting, examining, and auditing the Contractor's records directly relevant to City.
7. Contractor will provide each inmate of the City Jail Facilities, two (2) message credits per week at no charge to satisfy the needs of indigent inmates. City grants Contractor rights to sell advertising space within the electronic messaging system provided said advertising complies with all applicable laws; however, City reserves the right to approve all advertising in-regards to both the advertiser and the content of the advertisement. All approved advertisements placed on the system must include a disclaimer that it is a paid advertisement and its inclusion on the system does not constitute an endorsement or recommendation by City.
8. Contractor will provide City with the capability of monitoring and reviewing all electronic messages and attachments sent through the electronic messaging system, except those

messages deemed to be privileged under law between attorney and client. Further, Contractor will maintain a record of all electronic messages sent through the electronic messaging system for a period of Seven (7) years from the time the message is sent.

9. The work to be performed by Contractor under this Agreement may, at its discretion, be performed directly by it or wholly or in part through a subcontractor of its choosing. Contractor will remain liable for services hereunder.
10. City will provide Contractor with access to the City Jail Facilities and space within the Facilities, subject to operational security requirements, for the purposes of installing, networking, and maintaining of the electronic messaging system. Emergency access to the system will be granted as needed to Contractor Monday through Friday 8:00am to 4:00pm. Non-emergency access will be granted within twenty-four (24) hour notice from Contractor.
11. City will include information regarding the Contractor System and Services in the Inmate Handbook and in all other areas where information on the Inmate Telephone System is located.
12. City will provide information regarding Contractor messaging system in at least one location next to the inmate mailing address on the City website, with a link to the Contractor website.
13. Upon completion of installation and appropriate system testing, City will allow the electronic messaging to go live within forty-eight (48) hours' notice of system availability.
14. City will provide a list electronically twice each day of all inmates residing in the City Jail Facilities and their current housing assignments. Contractor will use this listing to ensure that each inmate is authorized to use only those kiosks appropriate to their housing assignment.
15. City will give prompt notice to Contractor of any trouble or irregularity in the functioning of any individual kiosk or the electronic messaging system.

Implementation Timeline before Go-Live Date:

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END

**EXHIBIT 2
TO CONTRACT
BETWEEN CITY OF ROANOKE, VIRGINIA AND
SMART COMMUNICATIONS HOLDING, INC.
FOR MAILGUARD SYSTEM**

REFERENCE: SOLE SOURCE PSS#17-018

CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall comply with the insurance requirements set forth in the Contract, including the items set forth below:

- A. Neither the Contractor nor any subcontractor shall commence work under this Contract until the Contractor has obtained and provided proof of the required insurance coverages to the City, and such proof has been approved by the City. The Contractor confirms to the City that all subcontractors have provided Contractor with proof of such insurance, or will do so prior to commencing any work under this Contract.
 - B. Contractor, including all subcontractors, shall, at its and/or their sole expense, obtain and maintain during the life of this Contract the insurance policies and/or coverages required by this section. The City and its officers, employees, agents, assigns, and volunteers shall be added as an additional insured to the general liability and automobile coverages of any such policies and such insurance coverages shall be primary and noncontributory to any insurance and/or self-insurance such additional insureds may have. The Contractor shall immediately notify in writing the City of any changes, modifications, and/or termination of any insurance coverages and/or policies required by this Contract. The Contractor shall provide to the City with the signed Contract an Accord certificate of insurance along with one of the following types of additional insured endorsements:
 - (1) ISO endorsement CG 20 33 which provides that the insured status of such entities is automatic if required by a contract or a written agreement otherwise known as a blanket additional insured endorsement. The coverage shall extend to the City and its officers, employees, agents, assigns, and volunteers. (If additional insured status is automatic under a different coverage form, Contractor must attach a copy of the coverage form to its certificate. Any required insurance policies shall be effective prior to the beginning of any work or other performance by Contractor and any subcontractors under this Contract).
- OR**
- (2) ISO endorsement CG 20 10 will be issued, prior to the beginning of any work or other performance by Contractor under this Contract, to the City and its officers, employees, agents, assigns, and volunteers naming them as an additional insured under the general liability coverage. (A copy of the binder confirming the issuance must be attached to the certificate. Any required insurance policies

shall be effective prior to the beginning of any work or other performance by Contractor and any subcontractors under this Contract).

However, if B (1) or (2) cannot be provided, the City's Risk Manager, in such Manager's sole discretion, may approve such other certificate of insurance or insurance document(s) that the Risk Manager deems acceptable. The Certificate Holder should be addressed as follows: City of Roanoke, Attn: City Manager, 215 Church Ave, Roanoke VA 24011.

C. The minimum insurance policies and/or coverages that shall be provided by the Contractor, including its subcontractors, include the following:

(1) Commercial General Liability: \$1,000,000.00

\$1,000,000.00 General Aggregate Limit (other than Products/Completed Operations).

\$1,000,000.00 Products/Completed Operations Aggregate Limit.

\$1,000,000.00 Personal Injury Liability (including liability for slander, libel, and defamation of character).

\$1,000,000.00 each occurrence limit

(2) Automobile Liability: \$1,000,000.00 combined single limit.

(3) Workers' Compensation and Employer's Liability:

Workers' Compensation: statutory coverage for Virginia

Employer's Liability:

\$100,000.00 Bodily Injury by Accident each occurrence

\$500,000.00 Bodily Injury by Disease Policy Limit.

\$100,000.00 Bodily Injury by Disease each employee.

(4) The required limits of insurance for this Contract may be achieved by combining underlying primary coverage with an umbrella liability coverage to apply in excess of the general and automobile liability policies, provided that such umbrella liability policy follows the form of the underlying primary coverage.

(5) Such insurance policies and/or coverages shall provide for coverage against any and all claims and demands made by a person or persons or any other entity for property damages or bodily or personal injury (including death) incurred in connection with the services, work, items, and/or other matters to be provided under this Contract with respect to the commercial general liability coverages and

the automobile liability coverages. With respect to the workers' compensation coverage, Contractor's and its subcontractors' insurance company shall waive rights of subrogation against the City and its officers, employees, agents, assigns, and volunteers.

- (6) Should any required insurance coverage be canceled or materially altered before the expiration term of the contract, it is the responsibility of the contractor to notify the City of such within thirty (30) days of the effective date of the change.

D. Proof of Insurance Coverage:

- (1) Contractor shall furnish the City with the above required certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies.
- (2) Where waiver of subrogation is required with respect to any policy of insurance required under this Section, such waiver shall be specified on the certificate of insurance.

E. Insurance coverage shall be in a form and with an insurance company approved by the City, which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Contract shall be authorized to do business in the Commonwealth of Virginia.

F. The Contractor's insurance policies and/or coverages shall not contain any exclusion for the Contractor's subcontractors.

G. The continued maintenance of the insurance policies and coverages required by the Contract is a continuing obligation, and the lapse and/or termination of any such policies or coverages without approved replacement policies and/or coverages being obtained shall be grounds for termination of the Contractor for default.

H. Nothing contained in the insurance requirements is to be construed as limiting the liability of the Contractor, and/or its subcontractors, or their insurance carriers. The City does not in any way represent that the coverages or the limits of insurance specified are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimums. The obligation of the Contractor, and its subcontractors, to purchase insurance shall not in any way limit the obligations of the Contractor in the event that the City or any of those named above should suffer any injury or loss in excess of the amount actually recoverable through insurance. Furthermore, there is no requirement or obligation for the City to seek any recovery against the Contractor's insurance company before seeking recovery directly from the Contractor.

END

**EXHIBIT 3
TO CONTRACT
BETWEEN CITY OF ROANOKE, VIRGINIA AND
SMART COMMUNICATIONS HOLDING, INC.
FOR MAILGUARD SYSTEM**

REFERENCE: SOLE SOURCE PSS#17-018

**SMART COMMUNICATIONS HOLDING, INC.
CONFIDENTIAL INFORMATION AND NON-DISCLOSURE**

The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the party's services and know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party (the "Disclosing Party"). The Disclosing Party shall designate, in writing, prior to disclosure to the Receiving Party, such information that Disclosing Party deems confidential, proprietary, or trade secrets of the Disclosing Party. As a condition to the receipt of the Confidential Information from the Disclosing Party, the receiving party (the "Receiving Party") shall, at all times during and after the term of this Agreement (i) not disclose in any manner, directly or indirectly, to any third party any portion of the Confidential Information; (ii) not use the Confidential Information in any fashion except to perform its duties hereunder or with the Disclosing Party's express prior written consent; (iii) disclose the Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the Receiving Party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The Receiving Party shall promptly notify the Disclosing Party of any unauthorized disclosure or use of the Confidential Information. The Receiving Party shall cooperate and assist the Disclosing Party in preventing or remedying any such unauthorized use or disclosure. The term "Confidential Information" does not include, and the obligations and undertakings set out in this section do not apply to: (a) Information which now is in the public domain or publicly known at the time of disclosure or hereafter comes into the public domain or generally known through no fault of the Receiving Party, otherwise than by reason of breach of this Agreement; (b) Information the disclosure of which is requested or required by law, regulation, court order or a regulatory agency, provided that, prompt notice of such requested disclosure shall be given to the Disclosing Party, if legally permitted, so that Disclosing Party may seek appropriate remedy to prevent such disclosure or waive compliance with the provisions of this Agreement and the Receiving Party, its officers, employees, agents, and advisers shall reasonably co-operate with the Disclosing Party, at the Disclosing Party's sole cost and expense, if the Disclosing Party elects to challenge the validity of such requirement and/or take such steps as the Disclosing Party may reasonably require to avoid or limit such disclosure; (c) Information that was previously known to the Receiving Party free of any obligation of confidentiality; (d) Information that is independently developed by the Receiving Party without reference to or use of the

Confidential Information; or (e) Information that is disclosed to the Receiving Party by a third party not under or in violation of, as the case may be, any confidentiality undertaking to the Disclosing Party. Subsections (a) through (e) of this paragraph notwithstanding, the parties agree that the technology that supports the Contractor's Services and Systems is Confidential Information and is a trade secret of Contractor.

END



SCC759/921
(06/16)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION FOR A CERTIFICATE OF AUTHORITY TO
TRANSACTION BUSINESS IN VIRGINIA AS A FOREIGN CORPORATION

Provide a
Certified
Copy of the
Formation
Document,
as Amended

REVIEW THE INSTRUCTIONS BEFORE SUBMITTING THIS FORM.

Corporation's name: Smart Communications Holding, Inc.

Designated name (if required): _____

State or other jurisdiction of Incorporation: Florida

Date of Incorporation: 12-24-2014 Period of duration: Perpetual

(Mark if applicable:) ☐ The corporation was previously authorized or registered to transact business in Virginia as a foreign business entity. (See Instructions.) Set forth additional information on an attachment.

The post office address, including the street and number, of the corporation's principal office is
4522 N. B Street TAMPA FL 33609
(number/street) (city or town) (state) (zip)

The corporation's registered agent in VIRGINIA is Registered Agents Inc.

The registered agent is (mark appropriate box):

- (1) an individual who is a resident of Virginia and
☐ an officer of the corporation.
☐ a director of the corporation.
☐ a member of the Virginia State Bar.

OR

- (2) ☒ a Virginia or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in Virginia.

The corporation's VIRGINIA registered office address, including the street and number, if any, which is identical to the business office of the registered agent, is

4445 Corporation Lane, STS# 264 Virginia Beach 23462
(number/street) (city or town) (zip)

which is physically located in the ☐ county or ☒ city of Virginia Beach

OFFICERS:	NAME AND TITLE	BUSINESS ADDRESS
	<u>Alexis K. Logan Pres. & Sec.</u>	<u>4522 N. B. Street</u>
	<u>James P. Logan V.P. & Treas.</u>	<u>Tampa, FL 33609</u>
		<u>4522 N. B. Street</u>
		<u>Tampa, FL 33609</u>

DIRECTORS:	NAME	BUSINESS ADDRESS
	<u>Alexis Logan</u>	<u>4522 N. B. Street</u>
	<u>James Logan</u>	<u>Tampa, FL 33609</u>
		<u>4522 N. B. Street</u>
		<u>Tampa, FL 33609</u>

STOCK:	NUMBER OF SHARES AUTHORIZED TO BE ISSUED	CLASS
	<u>10,000</u>	<u>Common</u>

Signed in the name of the foreign corporation by:

Alexis Logan
(signature)
Alexis Logan
(printed name)

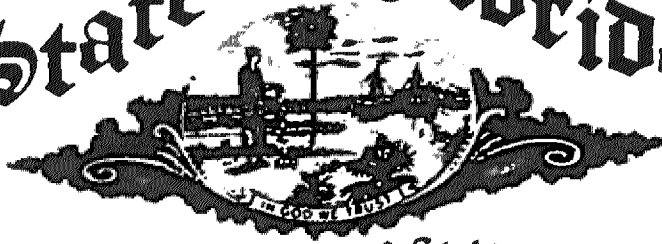
7-19-17
(date)

(954) 270-0792
(telephone number (optional))

President
(title) (see Instructions for examples of acceptable titles)

Personal information, such as a social security number, should NOT be included in a business entity document submitted to the Office of the Clerk for filing with the Commission. For more information, see Notice Regarding Personal Identifiable Information at www.scc.virginia.gov/clk.

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SMART COMMUNICATIONS HOLDING, INC., a corporation organized under the laws of the State of Florida, filed on December 29, 2014, effective December 24, 2014, as shown by the records of this office.

The document number of this corporation is P14000102324.



CR2EO22 (1-11)

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Sixteenth day of June, 2017

Ken Betzner
Ken Betzner
Secretary of State

I. BLANKET ADDITIONAL INSURED -- OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II -- WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED -- LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II -- WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED -- PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II -- WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed

and executed that contract or agreement; and

- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED -- BROAD FORM VENDORS

The following is added to **SECTION II -- WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";