

CONTRACT ROUTING FORM

1. Complete the information below BEFORE printing and completing items 2 through 7. Items in red are required.

Department: Public Works

Department contract file name (use effective date): CustomControls_PublicWorks_20240109

Project Code: [Click here to enter text.](#)

Contract type: Agreement

Contracted Services/Goods: Cellular services for WTP SCADA

Contract Component: Master

Change Order Number/Addendum Number: [Click here to enter text.](#)

Vendor Name: Custom Controls

Effective Date: 01/09/2024

Approved by: County Manager

Date approved by the BOC: [Click here to enter text.](#)

Ending Date: [Click here to enter a date.](#)

Total Amount:\$ \$1980

Please Return Contract to:
Name: Wendy Paschal
Email:wendy.paschal@chathamcountync.gov
Special Instructions for Clerks
Office:

2. Department Head or his/her designee has read the contract in its entirety.

By: *Blake Wells / Wendy Paschal* (Department Head signature required)

3. County Attorney has reviewed and approved the contract

County Attorney has reviewed and rejects the contract Reason: _____

This is an automatic renewal and does not require approval from the County Attorney: Yes No

If this box is checked the County Attorney’s Office has reviewed the contract but has not made needed changes to protect the County because the contract is a sole source contract and the services required by the County are not available from another vendor.

4. Technical/MIS Advisor has reviewed the contract if applicable. Yes No

5. Vendor has signed the contract. Yes No

6. A budget amendment is necessary before approval. Yes No

If budget amendment is necessary, please attach to this form.

7. Approval

Requires approval by the BOC - contracts over \$100,000.00. Follow Board submission guidelines.

Requires approval by the Manager – contracts \$100,000 or less.

8. Submit to Clerk.

Clerk’s Office Only

Finance Officer has signed the contract
 The Finance Officer is not required to sign the contract

Cellular M2M Agreement

**Custom
Controls
Unlimited**

2600 Garner Station Blvd.
Raleigh, NC 27603
HostedServices@ccuinc.com
Office: 919-661-5556
Fax 919-661-5557

Cellular M2M Agreement, Chatham County

Date	Services Performed By	Services Performed For
December 19, 2023	Custom Controls Unlimited 2600 Garner Station Blvd. Raleigh, NC 27603	Chatham County Post Office Box 608 Pittsboro, NC 27312

This Agreement **CHA121923JH** issued to Chatham County ('Client') by Custom Controls Unlimited, LLC ('Contractor') shall become effective as of January 1, 2024. Any term not otherwise defined herein shall have a meaning specified in the Terms and Conditions below. The Exhibit(s) to this Agreement, if any, shall be deemed to be a part hereof. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of this Contract, the terms of this Agreement shall govern and prevail.

Agreement Focus and Limitations

Nothing in this agreement is intended to create or constitute a joint venture, partnership agency, trust, or other associations of any kind between the parties or persons referred to herein. This agreement is independent of any other services, products, or contracts provided by Custom Controls Unlimited, LLC and is independent or irrespective of any customer-owned hardware.

Scope of Work

Cellular Data Service:

Contractor shall provide management of data and services from its primary provider, *Verizon Wireless: Vertical Solution* ('Verizon Wireless'). Selection of standard data levels shall be based on estimates depending upon variables such as poll-rate, transmission protocol, number of data addresses, number of sites, and other relevant variables as determined by the Contractor. This data service is designed for machine-to-machine communication for SCADA operations only and is not intended for day-to-day internet usage.

Maintenance Service:

Contractor shall provide remote maintenance of cellular modem firmware and software for provided hardware at an interval matching the selected billing cycle to ensure up-to-date security. In the event of hardware failure, Client is responsible for all materials and installation charges.

Term of Agreement and Termination

This agreement shall have a term of one (1) year beginning January 1, 2024 and continuing through the end of day prior to the anniversary date, December 31, 2024. In situations where new modems/sites requiring additional cellular service are added mid-contract, an amendment to this contract shall be created to cover these connections for the remainder of the current term. The subsequent additional modems/sites shall be included in the renewal of the expiring contract. Rates will be reevaluated forty-five (45) days prior to the completion of the 1-year contract period to determine if adjustments to the current Fee Schedule are warranted or required. A one-year renewal contract, that includes both original and added services, shall be provided to the Client for review and signature. If the new executed Agreement has not been received by the Contractor by the end of the expiring contract period, service shall continue for sixty (60) days; upon the 61st day, the Client's system will be suspended. This agreement, and any subsequent renewal agreement, shall be terminated by either party with a thirty-day (30) written notice.

This agreement may be terminated by Custom Controls Unlimited, LLC, in whole or in part, (a) whenever Client defaults in its performance in any manner and fails to remedy same within ten (10) days after receipt of notice setting forth the default. In the event of such termination, Client shall pay Custom Controls Unlimited, LLC for all services performed and all parts, materials, and equipment ordered by Custom Controls Unlimited, LLC up to the effective date of termination. Client may terminate this agreement if Custom Controls Unlimited, LLC is in default, provided that Client has provided Custom Controls Unlimited, LLC with written notice, including sufficient information regarding the alleged default, and Custom Controls Unlimited, LLC shall have thirty (30) days from the date of written notice to cure any such default.

Responsibilities

Chatham County expressly understands and agrees that it has no contractual relationship whatsoever with Verizon Wireless, the underlying carrier, or its affiliates or contractors and that Chatham County is not a third-party beneficiary of any agreement between Custom Controls Unlimited, LLC and the underlying carrier. In addition, Chatham County acknowledges and agrees that the underlying carrier and its affiliates and contractors shall have no legal, equitable, nor any other liability of kind to Custom Controls Unlimited, LLC, and Chatham County hereby waives any and all claims or demands from hereon.

Client Responsibilities

- A. Client shall notify Custom Controls Unlimited, LLC upon learning of any significant problem with performance of the network.
- B. Client shall cooperate with Custom Controls Unlimited, LLC in connection with performance by providing access to client's physical premises as reasonably necessary.
- C. Client shall, as necessary, purchase such software and hardware as may be reasonable and required to be installed by Contractor for effective operations, including, but not limited to, provider network migrations and hardware failure.
- D. Client shall, in event of hardware failure, be responsible for related charges for that billing period.
- E. Client shall pay for services rendered as noted in the "Fee Schedule" below in addition to any overages*.

Cellular M2M Agreement

F. Client is considered bound by the terms and conditions of this document if client is using this service, with or without a signed contract.

* An overage charge of \$2.00 will be added for every 1 Megabyte (MB) over total allotted monthly data; total allotted monthly data is calculated as the sum of all site's data allotment. To be billed separately.

Indemnification and Limitation

Client shall indemnify, defend, and hold Custom Controls Unlimited, LLC, and its parents, subsidiaries, affiliates, officers, employees, and licensors, harmless from any and all claims, demands, actions, damages, losses, liability, costs, and expenses, including actual attorney fees, arising out of or by virtue of (i) any breach or default in the performance of any obligation on Client's part to be performed under the terms of this Agreement; (ii) any direct or indirect act of negligence or willful misconduct of Client; (iii) Client's failure to comply with any requirements of any governmental authorities; or (iv) any failure of the applicable cellular network or equipment whereby the critical alarming data is not transmitted.

In no event shall either Party be liable under any circumstances for any special, consequential, indirect, or incidental damages arising out of or in any way connected with this Agreement or the services provided, including, but not limited to, damages for lost profits, anticipated sales, compensation, reimbursement, good will for expenditures, investments, leases, or any other commitments in connection with the business of Client, or damages to third parties. Except for liability arising out of Custom Controls Unlimited, LLC's gross negligence or willful misconduct, Custom Controls Unlimited, LLC's total liability for any cause shall be limited to the compensation paid to Custom Controls Unlimited, LLC by the Client under this Agreement.

Custom Controls Unlimited, LLC shall not be liable for any liabilities, losses, damages, expenses, fines, or penalties incurred by the Client or any third party as a result of a data security breach or other cyber security breach to the Client's computer systems, operating systems, and all other technological or information systems related to the Services provided hereunder, except to the extent such liability, loss, damage, expense, fine, or penalty is the direct result of Custom Controls Unlimited, LLC's willful or negligent acts or omissions.

Payments and Service Disconnection

Access fees and featured charges are billed in advance for the one-year period corresponding to the dates established in the *Term of Agreement* above. Invoices will be sent within the first week of the contract period.

Chatham County agrees to pay each bill in full within thirty (30) days (NET30) of invoice date. Late payments shall incur a 15% late fee. **Non-payment by the 61st day from the initial invoice date will result in suspension of the Client's system.**

Client shall notify Custom Controls Unlimited, LLC of any dispute with an invoice within ten (10) business days from receipt of said invoice. In the event that Client has a dispute with any charges, all undisputed charges on said invoice(s) will be due in accordance with the above times and the Parties shall negotiate in good faith to resolve any such dispute in a timely manner.

Overages

An overage shall be defined as any data amount surpassing the expected usage level for the Client's type of modem and number of sites, as listed in the following *Fee Schedule*. Historical data usage will serve as the baseline for expected use and overage determination. Overages shall be calculated monthly, based on the allotted monthly data as noted in the *Fee Schedule*, and shall be rounded up to the nearest whole Megabyte (MB). An overage charge of \$2.00 per 1 MB will be billed in arrears. To prevent overages, the Client shall not make configuration changes to any cellular modem nor attach devices to the modem or the modem network. In the event the Client notices atypical network performance, the Client shall contact the Contractor, as noted in "Client Responsibilities," to investigate atypical network performance. In the event the Contractor determines an overage is occurring, whether Client or Contractor initiated, the Contractor will make configuration changes to the modem network to prevent further overages.

Miscellaneous

Force Majeure. Under no circumstances shall either party be held liable for any delay or failure in performance resulting directly or indirectly by acts of nature, forces, or causes beyond its reasonable control, including, without limitation: internet, computer equipment, telecommunication equipment, other equipment, or electrical power failures; riots; insurrections; pandemics/epidemics; civil disturbances; fires; floods; storms; explosions; acts of God; war; governmental actions; actions, embargoes or blockades in effect on or after the date of this Agreement; orders or law of domestic or foreign courts or tribunals or other governmental authorities; loss of or fluctuations in heat, light, or air conditioning; or strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees.

Choice of Law. The laws of the State of in which the work is performed shall govern the validity, performance, construction, and enforcement of this Agreement without regard to choice of law provisions. No litigation concerning a dispute or arising out of this agreement may be commenced by Client more than one year after completion of work by Custom Controls Unlimited, LLC.

Dispute Resolution. If any controversy or claim arising out of this Agreement cannot be settled by the Parties hereto through good faith discussions, the Parties shall mediate their dispute before a mediator acceptable to both parties. If they cannot agree on a mediator, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation, but the parties shall share equally the costs of the mediator and the mediation facilities. If the controversy or claim cannot be resolved through mediation, the controversy or claim shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in effect. Any such controversy or claim shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claim or controversy of any other party unless otherwise agreed by the Parties.

No Third-Party Beneficiary. It is the explicit intention of the parties hereto, that no person or entity, other than the parties, is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties, and the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of and shall be enforceable only by the parties hereto or their respective permitted successors or assigns hereunder.

Binding Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties. Any provision hereof which imposes upon a party an obligation after termination or expiration of this Agreement shall survive termination or expiration hereof and be binding upon the party.

Amendment. This Agreement may only be altered or amended in an instrument, in writing, signed by all the parties hereto.

Waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Severability. The invalidity of any portion of this Agreement will and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, unless such assignment shall be to a parent, subsidiary, affiliate, or successor of either Party.

Notice. All notices will be in writing and shall be deemed given when delivered in person or mailed by certified or registered mail, return receipt required, with postage prepaid. Notices required to be given to the parties by each other will be addressed to the parties at the address set forth on the first page of this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior contemporaneous agreements, representations, and understandings of the parties.

Counterparts and Copies. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original. An electronic copy or photocopy of this Agreement containing electronic copies or photocopies of the signatures or initials of any Party shall be binding.

Cellular M2M Agreement

Contacts

Bill to Address	Chatham County Project Manager	Contractor Project Manager	Chatham County Cost Center (For Contractor Use)
Chatham County Post Office Box 608 Pittsboro, NC 27312	Daniel Clevenger 919 – 542 – 8238 daniel.clevenger@chathamnc.org	Josh Holder Joshua.holder@ccuinc.com	CHATHAM

Fee Schedule

Chatham County Cellular M2M Price Breakdown				
Service Description	Months	Units	Unit Cost	Annual Cost
Data-RTU-W-D-W – Bynum WWTP	12	1	\$35.00	\$420.00
Data-RTU-W-X-2 – Walter Bright BPS	12	1	\$65.00	\$780.00
Data-RTU-M – Master Modem	12	1	\$65.00	\$780.00
Yearly Total				\$1,980.00

* An overage charge of \$2.00 will be added for every 1 Megabyte (MB) over total allotted monthly data; total allotted monthly data is calculated as the sum of all site's data allotment. To be billed separately.

Signatures

By signing below you understand and agree to the terms set forth above, in all attachments, and any included exhibits.

Chatham County
Client Name

Dan LaMontagne
Client (Print)

Client (Signature)

1/17/2024
Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Roy Lynch
Roy Lynch, Finance Officer