

PART VI

CONTRACT AGREEMENT

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PART VI

CONTRACT AGREEMENT

THIS AGREEMENT, made on the _____ day of _____, 2016, by and between **Lexington-Fayette Urban County Government**, acting herein called "OWNER" and **AMK Services LLC**, doing business as a corporation located in the City of Johnstown, County of Licking, and State of Ohio, hereinafter called "CONTRACTOR."

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of Two Hundred Seventy-Nine Thousand Two Hundred Seventy Dollars and Fifty Cents (\$279,270.50) quoted in the proposal by the CONTRACTOR, dated May 20, 2016, hereby agree to commence and complete the construction described as follows:

1. SCOPE OF WORK

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and the Special Conditions of the Contract, the Specifications and Contract Documents therefore as prepared by Mission Critical Partners Inc for Radio Communication System for PSOC project.

2. TIME OF COMPLETION

The time period estimated and authorized by the OWNER for the proper execution of the Work by the Contract, in full, is hereby fixed as sixty (60) calendar days. The completion date is based on delivery to OWNER facility all equipment and supplies required to complete the project in its entirety.

EXCUSABLE DELAYS:

- A.** Contractor shall not be liable for delays in delivery or failure to perform due directly or indirectly to: (1) causes beyond Contractor's reasonable control, (2) Acts of God, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics, (3) Contractor's inability to timely obtain necessary materials, items, components or services from suppliers who are affected by the foregoing circumstances, or (4) the failure of the Owner to perform its obligations hereunder in a timely manner. The foregoing shall apply even though any of such causes exists at the time of signature of the Agreement by Contractor or occurs after delays in Contractor's performance of its obligations due to other reasons.
- B.** In the event of any delay or failure excused by this Section Excusable Delays, Contractor shall as soon as practical notify Owner and shall at the same time, or at the earliest practical date after such notice, specify the revised delivery and performance dates. In the event of such delay, the

time of delivery or of performance shall be extended for a reasonable time period to compensate for the time lost by Contractor by reason of the delay.

3. ISSUANCE OF WORK ORDERS

Notice to begin Work will be given in whole or for part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

4. THE CONTRACT SUM

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, as quoted in the proposal, subject to any additions and deductions, as provided therein.

5. SYSTEM IMPLEMENTATION

The following subsections apply to the Work to be performed under the Agreement.

- A. **Project Management and Implementation Plan.** Owner and Contractor each agree to perform their respective tasks and obligations pertaining to permits and licenses, Project Site surveys, general Project Site-related responsibilities, general Hardware-related responsibilities, and Project Site- specific responsibilities as set forth in the Statement of Work. The Owner's obligations set forth in the Statement of Work shall be performed by Owner in a timely and proper fashion in accordance with the Project Schedule, or as otherwise agreed upon by Owner and Contractor, to allow Contractor to timely perform its obligations under the Agreement.
- B. **Access.** Owner shall provide access, at no cost to Contractor, to all owned, leased, or licensed Project Sites at reasonable times, and with an escort (if required) at no charge, upon reasonable prior notification from Contractor. Owner shall ensure sufficient room, within reason, for construction vehicles used by Contractor. Owner shall issue temporary identification cards to Contractor's personnel and its authorized subcontractors, if required, for access to any of the Project Sites.
- C. **Changes in Sites.** Any sites where Contractor will operate and perform System installation under the terms of this Contract must be approved by Owner, which approval shall not be unreasonably withheld, delayed. Should Owner direct an addition to, removal from, or modification of the list of sites as detailed in this Agreement that affects Contractor's cost or schedule or System performance, the parties agree that such change shall entitle Contractor to a Change Order and each Party shall attempt, in good faith to fully negotiate and execute such change order prior to commencement of the Work at the changed site.
- D. **Preparatory Work on Sites.** Notwithstanding anything to the contrary contained in this Agreement, the parties agree that some Project Sites may require tower replacement or modifications, as well as related permitting and licensing for Work and/or obtaining physical real estate space. As stated in the Responsibility Matrix, Owner shall be responsible for securing all necessary site zoning, site access, or other permits (including but not limited to easements, impact studies, planning commission approval, variances, etc.) necessary for the Work, whether required by federal, state, or local authorities, with Contractor assisting by providing information and any required civil engineering drawings. Owner shall also have the responsibility to secure by lease, purchase, and easement or otherwise all rights and access to selected sites or additional

real estate as may be required. Owner also shall be responsible for paying all utility charges to the appropriate utility for providing utility services to the System installation areas. The Parties agree to mitigate the need for tower replacement or modification to the extent practical. If any unanticipated tower replacements become necessary, Contractor is entitled to an extension of time for any impacted activities and/or an equitable adjustment to the Contract Price to maintain the Project Schedule.

E. Frequency FCC Licensing. The Owner will be responsible assisting the Contractor in all aspect of FCC Commissioning including filing and obtaining all necessary signatures from the licensing Committee.

F. Contractor Licenses. Contractor will be responsible for obtaining all contractor licenses required for the performance of its duties and obligations.

6. PROGRESS PAYMENTS

A. The Total Agreement Price for the Hardware, the Software license and the Services shall be paid by the Owner to Contractor as follows:

Infrastructure Hardware:

1. Twenty percent (20%) of the Total Agreement Price shall be due within 30 days of signing of the Agreement by the Owner and Contractor.
2. Twenty percent (20%) of the Total Agreement Price shall be due at the time of the first System design review meeting.
3. Twenty percent (20%) of the Total Agreement Price shall be due at the time of Infrastructure Hardware shipment and delivery to Owner. The Owner shall have the right to inspect and confirm that the Infrastructure Hardware included in Seller's invoice has been delivered to the City.
4. Fifteen percent (15%) of the Total Agreement Price shall due upon completion of the Hardware installation.
5. Ten percent (10%) of the Total Agreement Price shall be due upon System Acceptance.
6. Ten percent (10%) of the Total Agreement Price shall be due upon Cutover.
7. Five percent (5%) of the Total Agreement Price plus any remaining unpaid portion of the Total Agreement Price for all Hardware, Software and Services to be provided under the terms of this Agreement upon completion of final documentation.

B. Payment Dates

The Payment(s) associated with the event(s) above shall be due thirty (30) days following the date of Contractor's invoice.

C. Other Amounts

Any other amounts due Contractor hereunder shall be due upon Owner's receipt of Contractor's invoice.

D. Late Payments

All amounts past due over thirty (30) days shall accrue interest from their due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as may be the maximum permissible rate under applicable law).

7. SUBCONTRACTING:

Contractor may subcontract any portion of Work (i.e. Tower Climbs and Electrical Wiring) to be performed by Contractor hereunder provided that Contractor shall be responsible for the performance and Work of any such subcontractors.

8. CONTRACTOR'S INSURANCE:

- A.** In order to protect itself and Owner, its officers, boards, commissions, agencies, employees and representatives under the indemnity and other provisions of this Agreement, Contractor shall obtain and at all times during the term of this Agreement keep in full force and effect comprehensive general liability and auto liability insurance policies issued by a company or companies authorized to do business in the State of Tennessee and licensed by the Insurance Department, with liability coverage provided for therein in the amounts of at least \$1,000,000.00 CSL (Combined Single Limits). Coverage afforded shall apply as primary. Owner shall be given ten (10) days advance notice of cancellation or nonrenewal. Within ten (10) days after execution of this Agreement, Contractor shall furnish Owner with a Certificate of Insurance listing Owner as an additional insured. If Contractor's insurance is underwritten on a Claims-Made basis, the Retroactive Date shall be prior to or coincide with the date of this Agreement and the Certificate of Insurance shall state that coverage is Claims-Made and indicate the Retroactive Date, Contractor shall maintain coverage for the duration of this Agreement and for two years following the completion of this Agreement. Contractor shall furnish Owner, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that Contractor shall furnish the Owner with a 30-day notice of cancellation or renewal. Contractor shall furnish evidence of adequate Worker's Compensation Insurance.

9. ACCEPTANCE AND FINAL PAYMENT

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the Work has been paid.

Contractor shall notify Owner that the System is ready for Acceptance Tests at least ten (10) days before commencement of the Acceptance Tests. Owner and Contractor shall jointly commence the Acceptance Tests on the date specified in Contractor's notice (or other mutually

agreeable date) and a representative of Contractor and a representative of Owner shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed. If the System does not fulfill the requirements of the Acceptance Tests, Contractor shall correct the defects at no additional cost to Owner. Upon correction of the defects the Acceptance Tests for the applicable part of the System shall be repeated in accordance with the procedures set forth in this Section. Successful completion of the Acceptance Test is the sole criterion for technical system acceptance and the initiation of the warranty period. Final system acceptance shall occur when the Hardware and Software for the System, Documentation Deliverables and Services have been furnished, delivered, installed and the Acceptance Tests have been passed and the Punch List is fully cleared.

10. CONFIDENTIALITY:

- A. During the term of this Agreement, it is anticipated that one party (hereafter the "Disclosing Party") may disclose to the other party (hereafter the "Receiving Party") information which the Disclosing Party considers proprietary and confidential. Accordingly, with respect to any specification, drawings, sketches, models, samples, tools, technical information, confidential business information or data, in written or other tangible form which: (1) has been designated in writing by the Disclosing Party as confidential or proprietary, or (2) is of the type that the Receiving Party customarily treats as confidential or proprietary, and which is furnished by the Disclosing Party to the Receiving party in contemplation of or under this Agreement (hereinafter "Information"), the Receiving Party shall treat such Information, for a period of five (5) years after the Effective Date of this Agreement, as confidential information with the same degree of care as the Receiving Party affords to confidential information of its own of a similar nature and shall not reproduce any such Information, in whole or in part, except as specifically authorized in writing by the Disclosing Party.
- B. The provisions of the preceding subsection shall not apply to any Information which:
 - 1. Is or shall become publicly available without breach of this Section Confidentiality, on the part of the Receiving Party;
 - 2. Is already known by the Receiving Party prior to receipt from the Disclosing Party;
 - 3. Is independently developed by the Receiving Party;
 - 4. Is rightfully obtained by the Receiving Party from third parties without restriction; or
 - 5. Is required to be disclosed by appropriate governmental or judicial order provided that Receiving Party gives Disclosing Party prior written notice of such order and assists Disclosing Party in taking reasonable actions to restrict such order.
- C. The provisions of this Section, Confidentiality, shall survive the expiration or termination of this Agreement.
- D. The confidentiality obligations of this Section, Confidentiality, shall not apply to Software, the confidentiality and other rights and obligations with respect to which are set forth in the Software License Agreement.

11. COMPLIANCE:

Contractor agrees to comply with all federal, state and local laws, ordinances, codes, rules and regulations in effect as of the Effective Date of this Agreement that may in any way affect the Work by Contractor hereunder. Any Hardware or Software furnished by Contractor under this Agreement shall comply in all material respects with federal, state and local laws and regulations applicable to the manufacture, packing, sale and shipment of such Hardware or Software as of the Effective Date of this Agreement and shall comply with any amendments thereto which may have come into effect prior to the time such Hardware or Software are delivered provided that the price and, if necessary, delivery of such Hardware or Software shall be equitably adjusted to compensate Contractor for the effect of compliance with any such amendments.

12. NOTICES:

Notices and other communications between the parties shall be transmitted in writing by certified mail or nationally recognized overnight courier service to the parties at the addresses set forth below and shall be deemed effective upon receipt by the receiving party. Either party may change its address by giving notice in writing thereof to the other party.

IF TO OWNER:

Attn:

IF TO CONTRACTOR: AMK Services. LLC

9291 Crouse Willison Rd

Johnstown, Ohio 43031

Attn: [Greg Graham]

WITH A COPY TO: AMK Services, LLC

4885 North State Road 9

Anderson, Indiana 46012

13. CONTRACT DOCUMENTS:

The Advertisement for Bids, Information for Bidders, the General Conditions, Performance and Payment Bonds, Contract Agreement, Special Conditions, Technical Specifications, any and all Addenda, and Proposal, and Plan Drawings form the Contract, and they are fully a part of the Contract as if hereto attached or herein repeated.

ORDER OF PRECEDENCE

The Statement of Work and the following Exhibits are expressly incorporated herein by reference and, together with this Agreement, constitute the Agreement Documents. In the event of a conflict among or between the Agreement Documents, the documents shall control in the order of precedence set forth below:

1. This Agreement (not including the Exhibits and documents listed below).
2. Detailed Design Documents
- Exhibits to be tailored as applicable**
3. Exhibit C – Statement of Work (Also included in RFP Response)
4. System Proposal
5. RFP

14. ENTIRE AGREEMENT:

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

15. AMENDMENT:

The parties expressly agree that this Agreement shall not be amended in any fashion except in a writing(s) executed by authorized representatives of both parties.

16. SEVERABILITY:

The invalidity, in whole or in part, of any Section or part of any Section of this Agreement shall not affect the validity of the remainder of such Section or the Agreement.

17. WAIVER:

No term of this Agreement may be waived except in a writing signed by the party waiving enforcement. No term of this Agreement shall be deemed to be waived by reason of any failure to previously enforce such term. In no event shall the making of any payment required by this Agreement constitute or be construed as a waiver by Owner of any breach of the covenants of this Agreement or a waiver of any default of Contractor and the making of any such payment by Owner while any such default or breach shall exist shall in no way impair or prejudice the right of Owner with respect to recovery of damages or other remedy as a result of such breach or default.

18. EXTRA WORK:

The OWNER, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be executed and paid for in accordance with the General Conditions, which is a part of this Contract.

- A. **Hardware Changes.** In the event of any change in the Hardware as a result of the imposition after the Effective Date of this Agreement of any requirements by any federal, state, or local government, an equitable adjustment in the price shall be made to reflect any added cost and expense of such change and the Agreement shall be modified in writing accordingly.
- B. **Owner Requested Changes.** Owner may request changes in or additions to the Work or in the time or place of performance of the Work under this Agreement. If any such change causes an

increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Agreement, Contractor shall be entitled to an equitable adjustment, by change order, in the Total Agreement Price, the Project Schedule, or both. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Owner and Contractor. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a change order signed by the parties hereto.

C. Concealed Conditions. If, following Owner's acceptance of the Detailed Design Documents, Contractor encounters a concealed condition, of which it had no reason to be aware, at one or more Project Sites, then the Parties agree to work together to determine the best course of action and agree to negotiate in good faith a Change Order and an equitable adjustment to the Project Schedule and/or Total Agreement Price.

D. Product Discontinuance. Subject to its obligation to fulfill its obligations set forth in the Agreement, Contractor reserves the right to change or to discontinue any product covered by the Agreement provided that Contractor agrees, with the Owners approval, to make available to the Owner a functionally equivalent replacement product equal to or better than the product discontinued at no additional cost to the Owner.

19. THE FOLLOWING IS AN ENUMERATION OF THE SPECIFICATIONS AND DRAWINGS (CONTRACT DOCUMENTS):

SPECIFICATIONS

SECTION NO.	TITLE	PAGES
I	Advertisement for Bids	AB 1 thru 5
II	Information for Bidders	IB 1 thru 10
III	Form of Proposal	P 1 thru 34
IV	General Conditions	GC 1 thru 51
V	Special Conditions	SC 1 thru 7
VI	Contract Agreement	CA 1 thru 5
VII	Performance and Payment Bonds	PB 1 thru 7
VIII	Addenda	AD 1 thru 1
IX	Technical Specifications	

ATTACHMENT A – System Sketch
ATTACHMENT B – Shelter Layout
ATTACHMENT C - Penthouse Antenna System
ATTACHMENT D – Pricing Sheets
ATTACHMENT E – Rack Elevation

IN WITNESSETH WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government.
Lexington, Kentucky
(Owner)

ATTEST:

Clerk of the Urban County Council

BY: _____
MAYOR

(Witness)

(Title)

AMK Services LLC
(Contractor)


(AMK Services)

BY: Opue Graham

Greg Graham
(Witness) President

CEO
(Title)

9291 Crouse Willison Rd. Johnstown OH 43031
(Address and Zip Code)

IMPORTANT: *Strike out any non-applicable terms.

Secretary of the Owner should attest. If the CONTRACTOR is corporation,
Secretary should attest. Give proper title of each person-executing Contract.