

MAINTENANCE SERVICE AGREEMENT

This Maintenance Service Agreement is made and entered into as of the ____ day of June, 2013, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, for and on behalf of its Division of Enhanced 911, Room 313, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "LFUCG") and **KRAUS ASSOCIATES, INC. d/b/a AK ASSOCIATES**, a Florida corporation with offices Located at 7 Independence Avenue, Derry, New Hampshire 03038 (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, LFUCG operates an enhanced 911 emergency telephone system (hereinafter referred to as the "911 System"); and

WHEREAS, LFUCG issued a Request for Proposals (hereinafter referred to as "RFP" #11-2013") seeking proposals from bidders interested in providing on-site and remote maintenance services for LFUCG's 911 System; and

WHEREAS, LFUCG has determined that Contractor submitted the best overall value response to Part II of RFP #11-2013; and

WHEREAS, Contractor desires to provide the maintenance services for the LFUCG as further provided in the RFP; and

WHEREAS, Contractor agrees to provide the LFUCG with manufacturers extended warranty/maintenance and second-tier support services quote for the LFUCG's 911 System on an annual bases; and

WHEREAS, Hardware, software and associated miscellaneous materials not covered under warranty or manufacturer's maintenance is the responsibility of LFUCG and/or the equipment manufacturer. The Contractor is not responsible for hardware or software, only the labor to maintain or install the hardware and software; and

WHEREAS, LFUCG has two Solacom IG Gateways with Guardian 911 CPE call taking software and it has the ability to be deployed in other counties. If LFUCG enters into agreement with another county to add Solacom remote 911 call taking equipment, the Contractor shall invoice LFUCG as specified in attachment 1; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, LFUCG and Contractor hereby agree as follows:

1. **Scope of Agreement:** LFUCG engages the Contractor to provide the maintenance support services identified in Part II of RFP #11-2013, which is attached hereto and incorporated herein by reference.
2. **Term:** The initial term of this Agreement shall be for a period of thirty-six (36) calendar months, commencing on July 1, 2013 and ending on June 30, 2016. This Agreement shall automatically renew for a second term of another thirty-six (36) month period, commencing on July 1, 2016 and ending on June 30, 2019. This Agreement shall then automatically renew for three (3) additional terms of twelve (12) calendar months each, July 1, 2019 and ending on June 30, 2020; July 1, 2020 and ending on June 30, 2021; July 1, 2021 and ending on June 30, 2022, unless it is earlier terminated. The contract rate for each renewal term shall increase by not more than four percent (4%) per term, from the contract rate for the immediately preceding term.
3. **Termination.** LFUCG shall have the right to terminate the agreement prior to the expiration date set forth in this contract, if LFUCG provides the Contractor with ninety (90) days written notification of termination by registered mail in the event Contractor fails to perform or observe any covenant or obligation set forth in this Agreement regarding the maintenance of the Hardware and Software (911 system); or within sixty (60) days advance written notice in the event that it fails to obtain sufficient funding approval from its legislative body. The LFUCG has the option to terminate this Agreement provided LFUCG has given Contractor ninety (90) days prior written notice and Contractor has failed to cure within said time or the failure is one which cannot be cured within that time and the Contractor has failed to take reasonable steps toward said cure within ninety (90) days

of notice from LFUCG. LFUCG has the right to not accept the automatic renewal as long as the LFUCG has notified the contractor within ninety (90) days of a term.

4. **Consideration:** In consideration of the Technical Maintenance Support Services to be performed by Contractor, the LFUCG shall pay to the Contractor the following fixed fee sums annually for the first term:

AK Elite Premier Maintenance Service	\$160,000.00
ALI/DBMS Maintenance Service	<u>87,000.00</u>
Total Yearly Maintenance Service	\$247,000.00

The Contractor shall provide LFUCG with an invoice for services to be rendered during on a semi-annual basis. The first invoice shall be issued upon execution of this Agreement by both parties, on or before September 1. LFUCG shall make payment of the invoice sum to Contractor within thirty (30) days of receipt.

5. **Contractor's Duties:** The Contractor shall have and perform the following duties, obligations, and responsibilities for the LFUCG:

Service Technicians. The Contractor shall provide one (1) dedicated on-site 911 maintenance service technician and 24-hour remote technical service by a trained, directly employed technician for all "out of hour" service problems. The service technicians shall be fully qualified in accordance with the requirements set forth in RFP #11-2013 and shall perform all services identified in RFP #11-2013.

ALI DBMS Analyst: The Contractor will provide, one full-time 9-1-1/GIS Data Analysts. This employee will be provided by Contractor and, therefore, be dedicated 24/7 to the on-going and daily needs of the LFUCG enterprise, in terms of the 9-1-1 GIS and ALI database. This individual's time would be entirely dedicated to the DBMS/ALI roles and responsibilities listed below and also provide on-going on-site support of the GIS Data Management System, dispatch mapping system, and the Notification System.

ALI/DBMS Roles and Responsibilities

- 5.1.1. Manage data delivery from 9-1-1 Data Providers (telcos) in the contracted government entities' serving area to 911 Data Services, which will include initial load and daily update files.
- 5.1.2. Follow NENA Data Standards and timelines as outlined in NENA 02-011.
- 5.1.3. Create and deliver selective routing files, if required.

- 5.1.4. Act as communication point for government entity and data providers.
- 5.1.5. Create and maintain all required tables.
- 5.1.6. Import all existing MSAGs and TNs to 9-1-1 DBMS and continue with daily processing.
- 5.1.7. Perform initial load and daily error resolution.
- 5.1.8. Provide correction to owner of record(s) once a valid address is determined.
- 5.1.9. Create and maintain MSAG by inputting adds, changes, and deletes to DBMS.
- 5.1.10. Ensure daily MSAG changes are provided to all Data Providers.
- 5.1.11. Perform ANI/ALI and NRF resolution as well as root cause analysis as to why the condition occurred in the first place.
- 5.1.12. Create reports for county and data providers, if required.
- 5.1.13. Create and deliver requested MSAG and Customer audit files/reports, if required.

5.2. On-site Service Support. The dedicated on-site service technician and the ALI/DBMS analyst shall be physically present at a site owned or otherwise provided and designated by LFUCG and shall provide services at or for LFUCG’s primary or secondary PSAP on Monday through Friday of each week, excluding LFUCG Holidays, as follows.

<u>Day</u>	<u>Hours</u>
Monday	8:00 a.m. – 4:00 p.m.
Tuesday	8:00 a.m. – 4:00 p.m.
Wednesday	8:00 a.m. – 4:00 p.m.
Thursday	8:00 a.m. – 4:00 p.m.
Friday	8:00 a.m. – 4:00 p.m.

LFUCG will make available to Contractor’s on-site service technician and ALI/DBMS analyst, two (2) offices and such related equipment that LFUCG, in its sole discretion, deems necessary. It is expressly agreed and understood that LFUCG makes no representations or warranties regarding the condition of these office premises or the premises where Contractor’s service technicians are or will be located or working.

5.3. Remote Technical Support Service. Contractor shall provide remote technical support via LFUCG secure portal service 24-hours each day, seven (7) days per week, for all “out of hours” service. Remote response shall be provided within a maximum two-hour time frame. Contractor shall provide the LFUCG with a current escalation list, as defined

in the RFP, and shall keep the list up-to-date by notifying LFUCG of any changes within 24-hours.

6. **Access to Information.** Contractor and its agents, servants and employees shall fully comply with all applicable laws and regulations regarding access to, and the release of, 911 information, including but not limited to the mandate regarding privacy and confidentiality of information contained in KRS 65.751 and KRS 65.7639, as amended.
7. **Default.** In the event any party fails to perform or satisfy each and every material term or condition of this Agreement, then such failure shall be deemed a default and the other parties shall be entitled to terminate this Agreement by giving ninety (90) days prior written notice. Termination by the LFUCG shall not entitle it to a refund for services performed prior to LFUCG giving written notice of termination.
8. **Miscellaneous Provisions.**
 - 8.1. **Incorporation by Reference.** All attachments to this Agreement are hereby incorporated into and made a part of this Agreement as if set out at length herein.
 - 8.2. **Headings.** The section headings set forth in this Agreement are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
 - 8.3. **Partial Invalidity.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each of the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
 - 8.4. **Successors and Assigns.** Except as otherwise expressly provided herein, the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties hereto. This provision shall not

be construed to permit assignment by the Contractor of any of its rights and duties under this Agreement.

8.5. No Partnership – Status of Relationship. The LFUCG, the Contractor, and any party respectively associated therewith, shall in no event be construed or become in any way or for any purpose partners, associates or joint venturers in the conduct of their respective businesses or otherwise. No contractor, licensee, agent, servant, employee, invitee or customer of the Contractor, specifically including Contractor's on-site service technician, shall be, or shall be deemed to be, a contractor, licensee, agent, servant, employee, invitee or customer of the LFUCG. Contractor agrees that its service technicians are and shall be at all times its employees and as such agrees to provide workers' compensation and unemployment insurance as required by Chapters 342 and 341, respectively, of the Kentucky Revised Statutes and any and all other benefits provided by federal, state or local law.

8.6. Compliance with Applicable Policies. All LFUCG properties are "drug and alcohol free zones" as designated by local and state laws. Neither the Contractor nor any of the persons acting in the interest of the Contractor or retained by or on behalf of the Contractor are permitted to have any drugs or alcohol products on LFUCG's properties. Use or possession of such items on LFUCG's properties may result in immediate removal of the person from the site and/or termination of the Agreement. Contractor's on-site service technician shall fully comply with all applicable LFUCG policies.

8.7. Rights of Third Persons. In no event shall this Agreement be construed to make the LFUCG or any agent of the LFUCG liable to any employees, general contractors, subcontractors, laborers, materialmen, craftsmen or other persons for labor, materials or services delivered to the LFUCG properties or goods specially fabricated for incorporation therein, or for debts for claims accruing or arising to any such persons against the Contractor. The Contractor expressly agrees that there is no relation of any type whatsoever, contractual or otherwise, either express or implied, between the LFUCG and any employee, general contractor, materialman, subcontractor, craftsman,

laborer or any other person or entity supplying any labor, materials or services to the LFUCG properties or specially fabricating goods to be incorporated therein. No persons are intended to be third party beneficiaries of this Agreement.

8.8. Modification. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

8.9. No Assignment. The Contractor may not assign its rights or duties under this Agreement to any person.

8.10. Notices. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to the LFUCG: Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn.: Director, Division of E911

If to the Company: Kraus Associates, Inc.
7 Independence Avenue
Derry, New Hampshire 03038
Attn.: Elaine M. Kraus, President

Unless otherwise specifically provided in this Agreement, notice hereunder shall be deemed to have been given upon its being deposited in the U.S. Mail, postage prepaid, and addressed as provided above. The parties hereto may change their respective

addresses as provided above by giving written notice of the change to the other parties hereto as provided in this paragraph.

8.11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

8.12. Jurisdiction and Venue. The parties hereto agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, (a) the courts of the Commonwealth of Kentucky situated in Lexington, Fayette County, Kentucky, or (b) the United States District Court for the Eastern District of Kentucky, Lexington Division, and the parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and waive any other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Agreement brought in the courts of the Commonwealth of Kentucky situated in Lexington, Fayette County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Lexington Division, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenience forum.

8.13. Anti-Discrimination. Each party shall provide equal opportunity and employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age or disability, shall promote equal employment and shall cause each of its respective contracting agencies to do so. This program of anti-discrimination shall apply to every aspect of the parties' employment policies and practices.

8.14. Risk Management Provisions. Contractor agrees to comply with the Risk Management provisions contained in their response to the RFP, which are incorporated herein by reference as if fully stated.

IN WITNESS WHEREOF, the LFUCG and the Contractor have executed this Agreement, by and through their duly authorized officers, as of the date first above written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

KRAUS ASSOCIATES INC.

By: _____
JIM GRAY, MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

By: _____
ELAINE M. KRAUS, PRESIDENT

The foregoing instrument was subscribed and acknowledged before me by Elaine M. Kraus, as President, for and on behalf of Kraus Associates, Inc., on this the ____ day of May, 2013.

My commission expires: _____.

Notary Public, State at Large, N.H.