

SUBCONTRACT AGREEMENT

BETWEEN

City of Aurora

(Contractor)

And

AMK Services, LLC

(Subcontractor)

DATE:

February 1, 2017



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THIS SUBCONTRACT AGREEMENT ("Subcontract Agreement") is made as of _____, _____ 2017 between the City of Aurora ("City") an Illinois municipal corporation whose principal place of business is 44 E. Downer Place, Aurora, IL 60507 and AMK Services, LLC, an Ohio limited liability company, whose principal place of business is located at 9291 Crouse Willison Road, Johnstown, Ohio 43031 ("AMK"),

Name of Project: Placement of a Contract Communications Specialist for the City.

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and AMK agree as follows:

1. SCOPE OF WORK.

AMK will place one of its employees at the City to serve as the Contract Communications Specialist, who will work under general supervision of the City's Department Director or designee and in accordance with established policies and procedures. The Contract Communications Specialist will make recommendations, implement, coordinate, troubleshoot and follow through on all radio, telephone, VOIP, and other communication systems, including telephone, two-way radio, a dedicated City Net and other modes of voice, video and data communications in order to apply current technologies for the provision of efficient, cost effective and "customer friendly" communications both between various City departments and between the City and its public and private customers (hereinafter the "Work" and as more fully detailed in Section 5 below).

2. THE SUBCONTRACT DOCUMENTS.

The Subcontract Documents consist of this Subcontract Agreement and any Exhibits, if any, attached hereto, between the City and AMK, and all modifications issued and signed by the parties hereto after execution of this Subcontract Agreement between City and AMK. These documents shall be a part of this Subcontract Agreement as if attached to this Subcontract Agreement or repeated herein. AMK and the City acknowledge that they have received and reviewed all of the above named documents.

3. TERM AND SUBCONTRACT PRICE.

This Subcontract Agreement shall commence on the above written date and shall continue for a one (1) year period, and at the end of the first year, the Subcontract Agreement shall automatically renew for an additional one (1) year period and on each succeeding yearly basis thereafter unless the City or AMK notifies the other, in writing, at least sixty (60) days prior to the end of the then term in effect that the Subcontract Agreement is not to be renewed, subject, however, to the termination rights set forth in Section 11 below. The City shall pay AMK \$125,000 annually for the performance of the Work, subject to additions and deductions authorized herein. Payments will be made monthly to the contractor at \$10,416.66. If renewed, Contract Communications Specialist shall receive the same pay increase as the City Cost of Living Adjustment provided for that year and the base contract cost shall increase accordingly. This pricing includes 40 hours of Overtime annually. Any additional Overtime will be billed monthly at a rate of \$90.00 per hour. AMK will provide a suitable vehicle for the

employee to use during work hours. This annual subcontract price shall be in effect for each renewal period unless otherwise agreed to in writing by AMK and the City and attached hereto as an amendment or modification.

4. RELATIONSHIP OF PARTIES.

City and AMK expressly agree and acknowledge that AMK and its employees are providing services as an "Independent Contractor" and that neither AMK nor its agents, employees and subcontractors can be considered as agents or employees of City for any purpose whatsoever. City shall not withhold any federal, state or local taxes or premiums, including income taxes, employee taxes, FICA, FUTA or payroll taxes, or workers compensation premiums whatsoever from AMK or its agents/employees/subcontractors. City and AMK expressly agree and acknowledge that no AMK employee, agent, or employee of a subcontractor is or shall be deemed an employee of City as defined in Ohio Revised Code Section 4123.01(A)(1) or any similar law. Moreover, City and AMK agree and acknowledge that City is not an employer or controlling employer as defined by OSHA's multi-employer citation policy.

5. AMK'S RESPONSIBILITIES AND WARRANTIES.

The employee placed at the City to serve as the Contract Communications Specialist shall work forty (40) hour weeks and shall be on call 24 hours a day to ensure 24/7/365 availability. He/She shall participate in the Police Technical Services' on-call rotation. He/She shall also be eligible for two (2) weeks of vacation with advance approval by AMK and notification to the City accordingly. He/She shall also be eligible for the same designated holidays as afforded to City employees. The duties and responsibilities of the Contract Communications Specialist shall include the following:

- Provide level I or level II response to the following telephone systems; Cisco VOIP, key systems, voicemail, 9-1-1 (Plant CML/Patriot), and 2 way LMR – mobile and portable radio systems (Harris Opensky); 700 mhz, and VHF/UHF interoperability radio systems, digital voice recording (NICE Inform), and fire station alerting (Zetron IP FSA).
- Coordinates all maintenance and repairs involving radio equipment, telephones and computers related to the above systems. Determines if repair is required in or out-of-department; if within department, performs repairs, or routes to proper service organization. Tracks repairs to completion and maintains log of same and recommends new equipment as necessary.
- Performs or assists with on-going and quarterly inventory on all radio and telephone equipment; coordinates installation of new equipment in house as well as mobile (squads and other City vehicles).
- Maintains and coordinates purchase, repair and replacement of headset and telephone equipment. Performs maintenance on telephone switch, including addition of circuit packs/cards, programming of terminal ports, adding telephones, changing classes of service and features upon request; installs, repairs and maintains all telephones. Installs and maintains telephone cables and equipment cabinets.

- Provides level i or level ii support for existing radio system and end user devices. Provides level i or level ii support for zetron fire station alerting, and the nice voice recorder systems, in cooperation with police technical services staff.
- Monitors, maintains and coordinates repairs and other work at City owned radio tower sites including generator re-fueling, battery monitoring/maintenance, structural repairs, etc.
- Maintains a variety of logs pertaining to communications systems and generates monthly reports for same.
- Attend various conferences and training seminars to stay abreast of industry and vendor changes such as APCO, NENA, Cisco, etc.
- Escorts and monitors vendors performing work on behalf of the City at various buildings and tower sites in and around the City of Aurora and surrounding communities.
- Assists with coordinating address information with proper police, fire and ems jurisdictions with telephone (e-9-1-1) database; insure they are provided with all pertinent maps and city geo-data at regular intervals.
- Perform routine administrative duties related to the above duties such as submitting requests for equipment purchases, parts replacement, service requests, etc.
- Perform routine administrative duties such as clean up and maintenance of records related to the above systems and tasks such as frequency licensing, user/device accounts and equipment databases.
- May be required to work varied shifts/hours.
- Performs other duties assigned as related to the position.

6. INDEMNIFICATION/INSURANCE REQUIREMENTS.

INDEMNIFICATION

- To the fullest extent permitted by law, AMK shall indemnify and hold harmless the City and all of their agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential, including but not limited to attorney's fees (collectively "Losses"), arising out of or resulting from AMK's performance under this Subcontract Agreement and caused in whole or in part by any negligent act or omission of AMK or any of its employees, agents or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. AMK shall not be responsible for any such Losses caused by the sole negligence or sole willful misconduct of the City, its members, managers, officers, and employees. In the event a claim is filed against the City for which AMK is to be responsible under this provision, the City shall promptly notify AMK in writing of such claim and AMK shall resolve such claim in a prompt and efficient manner.
- To the fullest extent permitted by law, the City shall indemnify and hold harmless AMK and all of their agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential, including but not limited to attorney's fees (collectively "Losses"), arising out of or caused in whole or in part by any negligent act or omission of the City or any of its employees, agents or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The City shall not be responsible for any

such Losses caused by the sole negligence or sole willful misconduct of AMK, its members, managers, officers, and employees. In the event a claim is filed against AMK for which the City is to be responsible under this provision, AMK shall promptly notify the City in writing of such claim and the City shall resolve such claim in a prompt and efficient manner.

- If City is cited by the Occupational Safety & Health Administration under OSHA's multi-employer workplace provisions or general duty clause (whether cited under 29 CFR 1910 or 1926) for hazards and unsafe working conditions caused, created or allowed to exist by AMK and its employees, agents or subcontractors, or is otherwise cited or charged by any other governmental or regulatory authority, AMK will indemnify and hold City harmless and will pay City for City's costs to defend against the citations and/or contest, settle or negotiate the citations, including attorneys' fees and all other losses, liabilities, damages, claims, expenses or deficiencies related thereto. AMK's employees, agents and subcontractors must also appear as witnesses and cooperate in OSHA or any other governmental proceedings if requested by City. This indemnity agreement, as relating to OSHA, is governed by Federal Law. Furthermore, if City is sued by any individual or entity arising from a workplace accident or injury occurring on this job site, whether said claim arises as a negligence claim, premises liability claim, frequenter statute claim, or intentional tort claim, and to the extent permitted by statute and law and to the extent caused, created or allowed to exist by AMK and its employees, agents or subcontractors, AMK and its subcontractors, shall defend and pay legal defense fees and costs, and shall indemnify City for said legal claims.
- In any and all claims against the City or against AMK or any of their agents or employees by any employee of the other or anyone directly or indirectly employed by it, the indemnification obligations under this Section 6 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the employee under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

INSURANCE REQUIREMENTS

- At AMK's expense, AMK shall secure and maintain in effect, throughout the duration of this Subcontract Agreement, insurance of the following kinds and limits to protect the City from and against all damages, claims, lawsuits and losses which may occur or arise with regard to the AMK's work on behalf of the City of Aurora. AMK shall furnish Certificates of Insurance to the City within ten (10) days after the execution of the final Subcontract Agreement. All insurance policies shall be written with insurance companies approved by the City of Aurora and licensed to do business in the State of Illinois and having a rating of not less than A IX, according to the latest edition of the A.M. Best Company; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice (ten (10) days in case of nonpayment of premium) is given to the City. This provision shall also be stated on each Certificate of Insurance as: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the certificate holder named herein".
- The City may inspect any and all policies of insurance at any time. If requested, AMK will give the City a copy of the insurance policies. The policies must be delivered to the City within ten business days of the request.
- The limits of liability for the insurance required shall provide coverage for not less than the following amount, or greater where required by law:

- (1) Worker's Compensation Insurance - Statutory amount.
 - (2) General Liability Insurance:
 - (a) \$1,000,000 per occurrence and \$2,000,000 general aggregate
 - (b) \$500,000 per occurrence for Property Damage
 - (c) \$1,000,000 per occurrence for Personal Injury
 - (3) Auto Liability Insurance:
 - (a) Bodily injury with limits not less than \$1,000,000
 - (b) Property damage with limits not less than \$500,000
 - (4) Umbrella excess liability: \$1,000,000 each occurrence, \$2,000,000 aggregate
- AMK shall include the City of Aurora as a primary, non-contributory additional named insured on both General and Auto Liability Insurance policies and reflect said language on its Certificate of Insurance provided to the City.
 - If AMK fails to comply with the insurance requirements contained herein, the City's obligations under the agreement shall terminate.

7. LIENS AND CLAIMS.

AMK covenants and agrees that no mechanic's claims or liens shall be filed or maintained by it or by any of its laborers, suppliers or materialmen on or relating to the Work for which services were rendered or materials provided, and if at any time there shall be such a claim, lien, charge or demand made, including, but not limited to, a mechanic's lien or a materialmen's lien, City may retain and hold out of any monies then or thereafter due to AMK so much thereof that may, in the opinion of City be required or necessary to indemnify against any such claim, and the full cost to it or them of the defense thereto. Further, if a mechanic's lien or a materialmen's lien is filed, AMK shall immediately, but no later than 30 following the filing of the lien, remove the lien from the property in question by bond or in accordance with other procedures for removal of liens under the laws of the state in which the property is located.

8. OWNERSHIP OF WORK PRODUCT.

All rights of ownership in all materials, products, and Work performed by AMK, including the rights to ideas and inventions and rights under patent, copyright, trademark, trade secret, or other applicable laws, shall belong exclusively to the City and shall be deemed "work for hire" in the course of the services being performed hereunder. The City shall have the right to obtain and hold all of the rights, title, and interest in the work product produced by AMK pursuant to this Subcontract Agreement, and have the right to obtain and hold any copyrights, patents, registrations, or other such protection required. To the extent that title to such work is not available, by operation of law, or such works are not considered "works for hire," all rights, title, and interest for such work are hereby irrevocably assigned to the City. AMK agrees to execute such papers and take such further action as the City may consider necessary or helpful to obtain, maintain, defend, or enforce patent, copyright, trademark, or other intellectual rights.

9. CONFIDENTIALITY.

AMK covenants and agrees that it will not reveal or disclose in any way any trade secrets or other Confidential Information of the City to any other persons, for any reason whatsoever, regardless of whether the information was provided to, communicated to, obtained by, or disclosed to AMK prior

to the date of this Agreement. AMK acknowledges and agrees that the term "Confidentiality Information" includes, but is not limited to, all conversations, documents, records, correspondence, files, lists, plans, designs, sketches, models, samples, systems, data, tools, technical information and any other information relative to any aspect of the City, its business, operations and practices. AMK acknowledges that it is obtaining access to the trade secrets and Confidential Information for the intended purpose to enable AMK to successfully perform the Work. Upon termination of this Subcontract Agreement or upon request of City, AMK shall surrender to City all trade secrets and Confidential Information in its possession, without retaining copies of the same. The prohibitions set forth in this section shall survive the term and termination of this Agreement. The obligations contained in this Section 9 shall not apply to information that AMK can establish by written documentation as known to AMK prior to its receipt of the information, or is available to the public generally from a source not under an obligation of confidentiality to the City or is lawfully obtained from a source other than the City having a legal right to disclose such information.

10. NON-SOLICITATION.

During the term of this Agreement and for a period of twenty-four (24) months thereafter, AMK shall not recruit or hire any employee or other agent of the City or induce or endeavor to induce any employee or other agent of the City to discontinue its employment with the City.

11. TERMINATION BY THE CITY

It is understood that this is an "at-will" relationship. The City reserves the right to terminate this Subcontract Agreement upon sixty (60) days written notice. . The City also reserves the right to request AMK to replace a Contract Communications Specialist due to poor performance issues as determined by the City and after written notice has been given to AMK of the deficiencies and such poor performance has not been corrected within fifteen (15) days thereafter. If the City makes such a request, AMK agrees to meet with the City within 5 business days to make arrangements for a qualified replacement.

12. ASSIGNMENT/SUBCONTRACTING.

AMK shall not assign or transfer this Subcontract Agreement nor subcontract any of its obligations, duties or rights hereunder, without City's prior written consent. Irrespective of any assignment, transfer or subcontract that has been approved by the City, AMK shall remain responsible and liable for the Work performed by any assignee, transferee or subcontractor

13. MISCELLANEOUS PROVISIONS.

13.1 GOVERNING LAW

This Subcontract Agreement shall be construed in accordance with, and governed by, the laws of the state of Illinois. The parties agree that any action brought by either party against the other in state court shall be properly venued in the Kane County, Illinois and that any action brought in federal court shall be properly venued in the United States District Court for the Northern District, of Illinois. The



parties further agree that they do hereby waive all questions of personal jurisdiction or venue for purposes of giving effect to this provision.

13.2 THIRD PARTY BENEFICIARIES

There are no third-party beneficiaries to this Subcontract Agreement. Nothing contained in this Subcontract Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either party.

13.3 AMENDMENTS AND ORDER OF PRECEDENCE

This Subcontract Agreement along with all exhibits attached hereto and other Subcontract Documents represents the entire agreement between the parties on this subject matter and supersedes all prior negotiations, representations or agreements, either written or oral. This Subcontract Agreement may be amended only by written instrument signed by both parties. If any of the provisions contained in this Subcontract Agreement, as amended from time to time, are inconsistent with the provisions of the other Subcontract Documents, then the provisions of this Subcontract Agreement, as amended, shall prevail.

13.4 OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

The obligations, warranties and representations of either party under this Subcontract Agreement that are of a continuing nature shall survive termination of this Subcontract Agreement or final completion of the Work, unless otherwise explicitly agreed to in the Subcontract Documents or by operation of law.

13.5 WAIVER OF RIGHTS

No delay or failure by either party to exercise any right hereunder and no partial or single exercise of any such right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

In case any one or more provisions set forth in the Subcontract Documents shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality, or unenforceability shall not affect any other provision of the Subcontract Documents, and the Subcontract Documents shall be construed as if such invalid, illegal, or unenforceable provision had never been incorporated therein.

13.6 NOTICE REQUIREMENTS

All notices under this Subcontract Agreement shall be in writing, sent by registered or certified U.S. Mail, return receipt requested, and addressed to the party at the address set forth at the beginning of this Subcontract Agreement. Notice to the City of Aurora should be sent to the attention of Human

Resources Director. Notice to AMK should be to the attention of Tracy L. Stamper, Vice President, AMK Services.

13.7 REPRESENTATION

The parties each represent that the person executing this document on behalf of such party has the power and authority to enter into this Subcontract Agreement and such entity has the authority to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by each party of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which it is a party or by which it is bound. The parties also represent and warrant that they have read the Subcontract Documents in their entirety, that they are fully aware of the contents thereof and its meaning, intent and legal effect, that they have been given the opportunity to consider the Contract Documents and seek legal assistance of their own choosing, that they have had the full right and opportunity to consult with such counsel, that they have executed this Subcontract Agreement voluntarily, free from coercion, duress or undue influence, and that this Subcontract Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

This Subcontract Agreement entered into as of the day and year first written above.

City:
The City of Aurora, Illinois

AMK:
AMK Services, LLC

By: _____

By: Apul Shaham