

**AGREEMENT FOR  
PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of June, 2011 by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "City", and Tusa Consulting Services, LLC, 75757 Highway 1082 (Old Military Road), Covington, LA 70435-6782, hereinafter referred to as "Consultant."

WHEREAS, the City desires to utilize the services of the Consultant for the purpose of providing professional, qualified and objective advice, guidance, and assistance in a timely manner to assist the City in implementing a transition of its current 800 Mhz public safety radio system to a turn-key Motorola radio system capable of operating effectively on the Johnson County Kansas public safety radio system; and

WHEREAS, Consultant by reason of training, knowledge, reputation and experience has expertise in providing such consulting services; and

WHEREAS, Consultant by execution of this Agreement represents itself as being capable, experienced and professionally qualified to undertake and perform the services described herein, and

WHEREAS, the City is authorized and empowered to contract with Consultant for the furnishing of professional consulting services in connection with the services described below, and

WHEREAS, Consultant agrees to perform the services described herein as an independent contractor and not as an employee of the City.

NOW THEREFORE, In consideration of the premises and mutual covenants herein set forth the parties agree as follows:

**SECTION I – GENERAL RESPONSIBILITIES OF CONSULTANT**

The Consultant shall provide professional, qualified and objective advice, guidance, and assistance in a timely manner to assist the City in implementing a transition of its current 800 Mhz public safety radio system to a turn-key Motorola radio system capable of operating effectively on the Johnson County Kansas public safety radio system.

Consultant's consulting services shall specifically include, but not be limited to providing advice, guidance and assistance to the City in negotiating a Communications Systems Agreement with Motorola Solutions Inc. ("Motorola") for the purchase of a turn-key Motorola public safety radio system capable of operating effectively on the Johnson County, Kansas public safety radio system. Subsequent to the execution of such a Communications Systems Agreement between the City and Motorola, Consultant shall provide advice, guidance and assistance to the City in evaluating and ensuring that

Motorola effectively, efficiently and completely performs all of the terms and conditions required of Motorola in the above referenced Communications Systems Agreement to include all Exhibits attached to the Agreement and any related purchase orders relating to the City's radio project that are to be administered through the Sprint Nextel rebanding project process. The parties agree that upon full execution of the Motorola Communications Systems Agreement and related rebanding documents, the Communications Systems Agreement and related rebanding documents shall be attached to this Agreement as Exhibit A and these documents shall establish the contractual terms and conditions to be satisfied by Motorola in implementing the City's new public safety radio system.

Consultant's services shall also specifically include, but not be limited to providing advice, guidance and assistance to the City in evaluating any and all performance tests provided for in the City's Communications Systems Agreement with Motorola.

## **SECTION II- IMPLEMENTATION RESPONSIBILITIES OF CONSULTANT**

Consultant shall be responsible for assisting and providing consulting services to the City regarding Motorola's implementation of its responsibilities in providing a fully functional turn-key radio system to the City. The details of Motorola's implementation responsibilities are set forth in Exhibit A, attached hereto. More specifically, Consultant shall provide the following implementation tasks:

1. Based on the "project schedule" included as an exhibit to the Motorola Communications System Agreement, attached hereto as Exhibit A, Consultant shall develop a specific set of consultant services supportive of the radio project's contracted implementation.
2. Using Motorola's method of procedure for cutover, Consultant will identify key events, times and work periods where either on-site or in-office technical consulting support will be necessary and shall provide the necessary consulting services to support the City as set forth in Section I above, to include but not limited to project management and technical support.
3. Consultant's performance shall include, but not be limited to the following tasks related to the City's transition to a Motorola radio system:
  - Attend project kickoff and other meetings related to the project.
  - Participate as a member of the on-site project management team.
  - Provide continuous monitoring of Motorola progress and report, as needed, on completed activities and deviations from the project schedule time line;

- Ensure that tasks falling within the City's responsibility are completed in accordance with the project schedule;
- Review Motorola cutover plan from EDACS system to Johnson County P-25 network.
- Review and approve dispatch hardware configuration and new R-56 grounding upgrades.
- Assist with fleet map and template development and implementation for Overland Park radio operation.
- Assist with vehicle installation specifications and oversight.
- Participate in progress review meetings with City/Motorola.
- Provide resolution action to Motorola identified technical or installation issues that require decisions by the City;
- Review all Motorola technical submittals and prepare action recommendation for City approval/execution;
- Conduct inspections of worksites to monitor Motorola progress.
- Develop punch lists throughout the implementation process and reconcile punch lists with City.
- Monitor and ensure Motorola is properly documenting and implementing the return of radios and other related equipment as required by the Sprint Nextel FRA.
- Monitor and participate in system acceptance testing for consoles and subscribers and as otherwise necessary.
- All other tasks to ensure a successful system cutover to the Johnson County P-25 network.

### **SECTION III- RELIANCE ON CONSULTANT'S EXPERTISE**

The Consultant agrees and acknowledges that the City has entered into this Agreement based on Consultant's knowledge, reputation, experience and expertise in providing technical and professional consulting service related to the purchase and implementation of public safety radio systems to specifically include Motorola radio systems. Consultant acknowledges that Consultant has represented itself as being capable, experienced and qualified to undertake and perform the services required of it under this Agreement. Consultant further acknowledges that it will only utilize qualified

staff members to provide the services required by this Agreement. Consultant agrees to screen the staff members assigned to perform services and activities pursuant to the terms of this Agreement, to include permitting the City to run criminal background checks on said staff members to ensure the public safety work of the City is not jeopardized and the City is able to comply with state and federal laws relating to such work.

**SECTION IV. CONSIDERATION**

The City agrees to pay the Consultant the following for satisfactory performance of the services required by this Agreement. This agreed upon consideration set forth in this Section includes all airfare, travel, hotel, meals, per diem, postage charges, telephone charges, and other expenses incurred by the Consultant during this process.

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Assist in contract negotiations with Motorola	30	\$4,050.00
Cutover Plan services	16	\$2,160.00
Dispatch Center and R056 Upgrade services	24	\$3,240.00
Fleet mapping and template development	40	\$5,400.00
Vehicle installation specifications and oversight	80	\$10,800.00
Acceptance test plan services	24	\$3,240.00
Miscellaneous tasks and services	40	\$5,400.00
<b>Total compensation</b>	<b>254</b>	<b>\$34,290.00</b>

Consultant shall submit monthly itemized billing invoices to the City. Payment of consideration pursuant to this Agreement shall be contingent upon each itemized activity on the billing invoices being reviewed and approved by the City. Consideration shall be due and payable to Consultant within thirty (30) days of presentment of Consultant’s undisputed invoice.

**SECTION V - TAXES**

The City is tax-exempt as a political subdivision under Section 4221 (a) of the Internal Revenue Code and K.S.A. 79-3606 (a). Consultant shall remove any taxes from the billing if City provides Consultant with the City’s tax exempt certificate.

**SECTION VI - DISPUTE RESOLUTION**

City and Consultant agree that disputes relative to any interpretation, performance, or breach of this Agreement shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, that no dispute will be submitted to arbitration without both parties’ express written consent.

## **SECTION VII - TERMINATION FOR CONVENIENCE**

The City may terminate this Agreement at its convenience by giving Consultant thirty (30) days prior written notice.

## **SECTION VIII - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING**

It is understood and agreed the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Consultant and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

## **SECTION IX - INDEPENDENT CONTRACTOR STATUS**

Consultant is an independent contractor and as such neither Consultant nor its personnel are agents or employees of the City. Consultant is responsible for payment of any and all federal, state and local taxes.

## **SECTION X - INDEMNIFICATION**

- A. **Definitions:** For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:
1. **"Consultant"** means and includes Consultant, all of its affiliates and subsidiaries, its sub-vendors, sub-consultants and material men and their respective officers, directors, servants, agents and employees; and
  2. **"Loss"** means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement, whether arising before or after the completion of the performance required hereunder.
- B. **The Indemnity:** For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement,

Consultant shall indemnify, defend and hold harmless the City against all Loss that arises out of or relate to any negligent act or omission of Consultant. Consultant's obligations shall not apply to any liability or damage arising from the negligence of the City.

C. **General Limitation:** Nothing in this section shall be deemed to impose liability on the Consultant to indemnify the City for Loss when the City's negligence or other actionable fault is the sole cause of Loss.

D. **Waiver of Statutory Defenses:** With respect to the City's rights as set forth herein, the Consultant expressly waives all statutory defenses, including, but not limited to, those under worker's compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

## SECTION XI – NON-DISCRIMINATION AND OTHER LAWS

A. The Consultant agrees that:

1. The Consultant shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person during the performance of services under the present Agreement because of race, religion, color, sex, disability, national origin ancestry or age;
2. In all solicitations or advertisements for employees, the Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. If the Consultant fails to comply with the manner in which the Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. If the Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
5. The Consultant shall include the provisions of subsections (A) (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon any such Sub-Consultant or Sub-Vendor.

B. The Consultant further agrees to abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the

Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

## **SECTION XII - APPLICABLE LAW, NONWAIVER**

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

## **SECTION XIII - AGREEMENT TERM**

Subject to the termination for convenience provisions set forth above, this Agreement shall be effective June 1, 2011, and shall continue in effect until project completion.

## **SECTION XIX – SUBCONTRACTORS**

Consultant shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Consultant request and the City agree to work being subcontracted, the Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as Consultant is for the acts and omissions of the persons it directly employs.

## **SECTION XIII - INSURANCE REQUIREMENTS**

### **A. General -**

The Consultant shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. The Consultant shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

### **B. Notice of Claim Reduction of Policy Limits -**

The Consultant, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consultant shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) in excess of \$10,000.00, whether or not such impairment came about as a result of this contract.

If the City determines that the Consultant's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Consultant shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. General Liability –

The Commercial General Liability insurance coverage that is provided by Consultant under this Agreement shall protect Consultant against all claims arising from its performance under this Agreement. In addition, this policy shall specifically insure the contractual liability assumed by the Consultant in Exhibits A and B.

MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B")

General Aggregate:	\$ 500,000
Products-Completed Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following conditions:

- a) Broad Form Contractual/Contractually Assumed Liability
- b) City as an additional insured

D. Automobile Liability –

This insurance shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

- (1) Any Auto OR
- (2) All Owned Autos; Hired Autos; and Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the Consultant.

E. Workers' Compensation and Employer's Liability -

This insurance shall protect the Consultant against all claims under applicable state Workers' Compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within



the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

F. Professional Liability -

This insurance shall protect Consultant against all wrongful acts arising out of the professional services provided to the City. Limits shall be no less than \$500,000 each wrongful act/\$500,000 annual aggregate.

G. Industry Ratings -

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of A- or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consultant.

**SECTION XIV – AMENDMENTS TO CONTRACT TERMS**

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and the Consultant. Should a decision be made to amend the terms of this Agreement, the City and the Consultant must mutually agree in writing to the amended terms.

**SECTION XV - SEVERABILITY CLAUSE.**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**SECTION XVI – CASH BASIS**

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for

which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify Consultant of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the City's then current budget year.

**SECTION XVII - PROHIBITION AGAINST CONTINGENT FEES**

Consultant warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Contractor, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

**SECTION XVIII - EXECUTION OF CONTRACT**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

**CITY OF OVERLAND PARK, KANSAS**

\_\_\_\_\_  
Carl Gerlach, Mayor

Attest

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

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John J. Knoll, Senior Assistant City Attorney

