

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2009 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, herein referred to as "Consultant."

SECTION I - SCOPE OF WORK

1. The Consultant will provide qualified and objective advice, guidance, and assistance to provide timely, cost-effective options to modernize the City's radio system, and document all appropriate findings and recommendations in a follow-up report for the Consideration set forth in Section II below. This report will include all services provided in the Statement of Qualifications and Proposal, Consulting Services for System Reliability and Upgrade Options, Phase 1, which is attached hereto and incorporated herein respectively as Exhibit A.

2. After completion of the services described in Section 1, paragraph one, above, the City reserves the option to avail itself of the services described in Phase II - Implementation, as described in Exhibit A, at the quoted rate set forth in Exhibit A. Should the City choose to exercise its option for these services, it will notify consultant, who will then perform these services as agreed.

SECTION II- CONSIDERATION

The City will pay Consultant for services as follows:

Phase I Project Cost Including Follow-Up Report of Findings and Recommendations	\$12,600.00
Phase II Implementation (If City exercises option)	\$29,430.00

The 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.

Consultant will bill the Phase I Project Cost upon satisfactory completion of the Consultant's reliability assessment and Future Options and Budgetary Costs report.

If the City exercises its option for Phase II, Consultant will bill the Total Implementation Cost upon satisfactory project completion.

Completion of the required billing benchmarks will be verified by Major Rita Porter, who will also act as the City's contact person for this contract at the following address:

Major Rita Porter
Overland Park Police Department
12400 Foster
Overland Park, KS 66213
913-895-8303
Rita.Porter@opkansas.org

SECTION III - 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 IV - 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 V - TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement at their convenience by giving the other party written notice. This Agreement will be terminated on the first day of the month following the month in which a termination notice is received by either party.

SECTION VI - 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 VII - INDEPENDENT CONSULTANT STATUS

Consultant is an independent Consultant 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 VIII - 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 losses that arise 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 misuse of the Devices or to the extent resulting 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.

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 IX – 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.

The provisions of this section shall not apply to a contract entered into by a Consultant:

- (a) who employs fewer than four employees during the term of such contract; or
- (b) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

- 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. 1201 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.

C. SECTION X - 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 XI - AGREEMENT TERM

This Agreement shall be effective June 1, 2009, and shall continue in effect until project completion. Either party may terminate this agreement at any time for their convenience as described in Section V, above.

SECTION XII – 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 – ADJUSTMENT 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. This paragraph shall not be construed so as to permit City to terminate the Agreement in order to acquire any other functionally similar product or service or to allocate funds directly or indirectly to perform essentially the same application for which the product or service under the agreement is intended.

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:

John J. Knoll, Senior Assistant City Attorney

TUSA CONSULTING SERVICES, LLC

Dean Hart, Partner

CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ___ day of _____, 20___, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Dean Hart, Partner, of Tusa Consulting, LLC, a limited liability company duly organized and existing under and by virtue of the laws of Louisiana; who is personally known to me to be a Partner and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

MY APPOINTMENT EXPIRES:
