

**MADISON COUNTY FISCAL COURT
MADISON COUNTY, KY
RESOLUTION 20-133**

**A RESOLUTION APPROVING A SOLE SOURCE CONTRACT WITH AMK SERVICES FOR
DESIGN AND OPTIMIZATION PLANNING**

WHEREAS, the Madison County Emergency Management Agency and Chemical Stockpile Emergency Preparedness Program has funding to plan and optimize our current communications infrastructure; and

WHEREAS, the Madison County EMA/CSEP Program wishes to design and optimize current communications infrastructure to be compatible with those of the BRRN; and

WHEREAS, the Madison County EMA/CSEP Program wishes to approve a sole source contract with AMK Services for design and optimization planning, which is attached hereto this Resolution.

**NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL COURT DOES HEREBY
APPROVE THIS RESOLUTION AND AUTHORIZES THE JUDGE EXECUTIVE TO
EXECUTE SAME ON BEHALF OF THE COUNTY.**

Motion made by Tom Botkin, seconded by Roger Barger.

Vote:

Yes

No

Judge Reagan Taylor

X

Magistrate Larry Combs

Magistrate John Tudor

X

Magistrate Roger Barger

X

Magistrate Tom Botkin

X

Signed:

R-Taylor
Reagan Taylor
Madison County Judge Executive

Attested:

Kenny Barger
Kenny Barger
Madison County Clerk

SYSTEM PURCHASE AGREEMENT

BETWEEN

MADISON COUNTY, KY/CSEPP

(Buyer)

and

AMK SERVICES (Seller)

DATE: 12/15/2020

System Purchase Agreement

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SYSTEM PURCHASE AGREEMENT



THIS SYSTEM PURCHASE AGREEMENT ("Agreement") is made and entered into this 15th day of December 2020 ("Effective Date"), by and between Madison County/CSEPP (hereinafter referred to as "Buyer") and AMK Services, LLC (hereinafter referred to as "Seller") together the ("Parties").

WITNESSETH:

WHEREAS, Buyer whose address is: 560 S. Keeneland Dr. Richmond, KY 40475 and requesting a statement of work (SOW) to upgrade existing L3Harris 7/800MHz P25 Digital Public Safety Radio System as set forth in the attached Statement of Work.

WHEREAS Seller, whose address is 9291 Crouse Willison Road, Johnstown, OH 43031 delivered a Statement of Work to provide the radio communication system and services requested by Buyer.

WHEREAS Buyer has selected Seller's Proposal and now desires to contract with Seller to provide Buyer with the radio communications system and services set forth in the Statement of Work attached to this Agreement as an exhibit.

WHEREAS Buyer and Seller desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the Buyer and Seller as follows:



1. DEFINITIONS:

As used herein, the terms set forth below shall have meanings set forth below.

- A. "Acceptance" shall mean acceptance of the System as set forth in the Testing and Acceptance section of this Agreement.
- B. "Acceptance Date" shall mean the date the System is accepted or deemed accepted as set forth in the Testing and Acceptance section of this Agreement.
- C. "Acceptance Tests" shall mean the testing procedures attached to the Statement of Work and mutually agreed upon by Buyer and Seller to be performed to determine whether the System has met the acceptance criteria either set forth in the Statement of Work attached to this Agreement as an exhibit or as mutually agreed upon in writing by Buyer and Seller.
- D. "Certificate of Insurance" shall mean the certificate to be provided by Seller evidencing the insurance coverage of Seller.
- E. "Change Order" shall mean a written modification to the Total Agreement Price, Project Schedule or other Agreement terms which is signed by both Parties.
- F. "Detailed System Documents" shall mean those documents deliverable by Seller to Buyer at the conclusion of the Detailed System Review described in the subsection Detailed System Review under the Project Management Planning section of this agreement.
- G. "Detailed System Review" or "DSR" shall have the meaning given in the subsection Detailed System Review under the Project Management Planning section of this agreement.
- H. "Documentation Deliverables" shall mean the standard commercial quality manuals to be furnished by the Seller to the Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit and this Agreement.
- I. "Effective Date of the Agreement" shall be the date on which the Agreement is signed by the last of the parties to sign the Agreement. The "Effective Date" shall be the date inserted on the first page of the Agreement.
- J. "Expiration Date" shall mean the date on which the Term of this Agreement shall end which shall be the end of the Warranty Period (as defined in the Warranty Section) except that some other sections of this Agreement may have a later end date for that section of the Agreement as specifically provided in those sections of this Agreement.
- K. "FX Agreement" shall have the meaning given in Section Software License – Software Maintenance Services of this agreement.
- L. "Hardware" shall mean, collectively, the Terminal Hardware and Infrastructure Hardware, as defined below.

- M. "Infrastructure Hardware" shall mean the equipment, goods, and materials to be supplied by Seller for the System infrastructure, as further described in the Statement of Work attached to this Agreement as an exhibit.
- N. "Project Kick-Off Meeting" shall have the meeting given in the Project Management and Planning section of this Agreement.
- O. "Project Manager" shall mean each respective Party's duly authorized representative designated to manage each Party's Project obligations.
- P. "Project Schedule" shall mean the schedule attached to the Statement of Work or otherwise mutually agreed upon by Seller and Buyer in writing for the delivery of the Hardware and Software and the performance of the Services described in the Statement of Work attached to this Agreement as an exhibit.
- Q. "Project Sites" shall mean those sites where any construction work is performed or any Infrastructure Hardware is installed under the terms of this Agreement. The term "Project Sites" will include all of the Tower Sites (as defined below).
- R. "Responsibility Matrix" shall mean the table included in the Statement of Work attached to this Agreement as an exhibit, which depicts the roles and responsibilities of Seller and Buyer set forth this Agreement.
- S. "Services" or "Work" shall mean the services and work to be provided by Seller to Buyer included in the Statement of Work attached to this Agreement as an exhibit.
- T. "Software" shall mean the proprietary computer software of Seller as owned exclusively by Seller or Seller's suppliers, as appropriate, and as further defined in and licensed to Buyer pursuant to the terms of the Software License Agreement.
- U. "Software License Agreement" shall mean the System Software License Agreement set forth in an exhibit attached to this Agreement.
- V. "Statement of Work" shall mean the description of the work to be performed by Seller to deliver the Hardware, install the System and provide the Services, all as described in an exhibit attached to this Agreement.
- W. "System" shall mean the radio communications system comprised of the Hardware and Software to be furnished by Seller to Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit.
- X. "Terminal Hardware" shall mean mobile units, portable units, control stations and related accessories to be provided by Seller as listed in the Statement of Work attached to this Agreement as an exhibit.
- Y. "Total Agreement Price" shall mean the price of the Hardware, the Software license and the Services to be furnished by Seller to Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit and this Agreement.

- Z. "Tower Sites" shall mean those sites where equipment will be installed on existing or new towers as included in the Contractor's Statement of Work and to be finalized in the Detailed System Documents or subsequent Change Orders.

2. STATEMENT OF WORK:

- A. Seller shall furnish and provide the Documentation Deliverables and Services in accordance with the terms of the Statement of Work, attached to this Agreement as an Exhibit A, is a more detailed Scope of Work. The following services are being provided as part of this Scope.

- System RF Design
- Microwave Feasibility Study
- Tower/Structural Review
- Shelter Analysis
- Site Grounding
- BRN Network Connectivity
- Core Control Analysis
- Ancillary Systems
- Fleet Mapping
- 911 Dispatch Integration

3. PROJECT MANAGEMENT AND PLANNING:

- A. **Project Managers.** Seller shall designate a Project Manager as set forth in the Statement of Work who will lead the Seller's team for the System installation project and other Services and Work described in this Agreement (the "Project") and will serve as the Buyer's primary point-of-contact for Seller's project team and the official liaison between Seller's project team and Buyer. Buyer shall designate a Project Manager to function as the single point-of-contact and official liaison between Seller's Project Manager and the Buyer.
- B. **Project Completion Dates.** The Project completion dates are described in the schedule included in the Statement of Work, entitled "Project Schedule." The Project Schedule may only be modified by mutual written approval of the Parties or as otherwise provided in this Agreement.
- C. **Project Kick-off Meeting.** Promptly after the Effective Date of the Agreement, the Seller's Project Manager shall schedule a Project Kick-Off Meeting, the timing and location of which will be mutually agreed upon by Seller and Buyer. The objectives of this meeting include introduction of all project participants, review of the roles of the project participants, review

of the overall project scope and objectives, review of the resource and scheduling requirements and review of current site status.

- D. Site Visits.** All existing towers, shelters and associated equipment provided by or mandated by Buyer shall be satisfactory in all manners to accommodate the System proposed by the Seller. Following the Effective Date of the Agreement, the Buyer shall provide Seller with access to all Project Sites upon reasonable notice to allow Seller to thoroughly examine each Site and to perform the Detailed System Review, to prepare a schedule of preparatory work required for each site and a timeline for completion of the preparatory work at each site.
- E. Detailed System Review.** The Detailed System Review (“DSR”) phase will commence after the Effective Date of the Agreement, and conclude at a mutually acceptable time to maintain adherence to the Project Schedule. During the DSR, Seller’s Project Manager will meet with Buyer’s project team on one or multiple occasions to review the system design, technical data, and site-specific information to confirm and to refine the System and Tower Sites. At the conclusion of the DSR, Seller will provide Buyer with the following documents (the “Detailed System Documents”) for review and approval by Buyer:
- Final Site Plans
 - Project Schedule
 - Shelter Floor Plan Drawings
 - Rack Elevation Drawings
 - System Block and Level Diagrams
 - Power and HVAC Loads
 - Antenna Network Diagrams
 - Frequency Plans (including spectrum analysis and intermodulation studies of existing and proposed frequencies at each site).
 - TX Combiner Plan by Site
 - Network Backhaul Plans
 - Any other documents as mutually agreed upon by the parties

Buyer shall conduct its review of the above documents in a timely manner. Approval of Detailed System Documents by the Buyer shall not be unreasonably withheld, conditioned or delayed. Buyer approval of completed detailed design is required to order equipment and the start of any construction related work.

- F. Project Schedule.** The Project Schedule for the Work is included in the Statement of Work, as an attachment entitled “Project Schedule.” Updates to the start dates and durations will be made as the information evolves and will be mutually agreed upon by both parties or updated as otherwise provided herein.
- G. System Implementation Communications.** Seller and Buyer shall jointly establish a plan that defines regular meetings, reporting structure, and other communications activities,

including working sessions that may be needed throughout the term of this Agreement to plan sub-tasks, including at a minimum: (a) one or more DSR meetings to communicate the final engineering design; (b) formal monthly reports to Buyer's Project Manager concerning work in progress and accomplishments; (c) periodic status meetings at which the parties' Project Managers and other project participants will provide updates; (d) conference calls with Seller's and Buyer's project teams to discuss tasks, assign responsibility, and establish schedules; and (e) workshops or working sessions that may be needed throughout the Project to plan subtasks.

- H. **Buyer Approvals.** Buyer will review and respond with reasonable promptness to all submittals or other items requiring its approval under this Agreement. For all such submittals or other items Buyer will provide the Seller with either; (i) written notification of Buyer's approval, or, or (ii) in the case of a submittal that does not meet the requirements of the Agreement, a written notification of Buyer's disapproval. Buyer's disapproval notification will be provided with reasonable detail to sufficiently advise Seller of the basis on which the submittal was determined to be unacceptable. The parties agree that this section, Project Management and Planning, does not relate to the Testing and Acceptance procedures in the Testing and Acceptance section of this Agreement.

4. OBLIGATIONS FOR SYSTEM IMPLEMENTATION:

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

- A. **Project Management and Implementation Plan.** Buyer and Seller 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 Buyer's obligations set forth in the Statement of Work shall be performed by Buyer in a timely and proper fashion in accordance with the Project Schedule, or as otherwise agreed upon by Buyer and Seller, to allow Seller to timely perform its obligations under the Agreement.
- B. **Access.** Buyer shall provide access, at no cost to Seller, 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 Seller. Buyer shall ensure sufficient room, within reason, for construction vehicles used by Seller. Buyer shall issue temporary identification cards to Seller's personnel and its authorized subcontractors, if required, for access to any of the Project Sites.
- C. **Changes in Sites.** Any sites where Seller will operate and perform System installation under the terms of this Contract must be approved by Buyer, which approval shall not be unreasonably withheld, delayed. Should Buyer direct an addition to, removal from, or modification of the list of sites as detailed in this Agreement that affects Seller's cost or schedule or System performance, the parties agree that such change shall entitle Seller 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 modifications, as well as related permitting and licensing for Work. As stated in the Responsibility Matrix,

Buyer 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 Seller assisting by providing information and any required civil engineering drawings. Buyer 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. Buyer 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 modification to the extent practical. If any unanticipated tower replacements become necessary, Seller 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 Buyer will be responsible assisting the Seller in all aspect of FCC Commissioning including filing and obtaining all necessary signatures from the licensing Committee. AMK is responsible for all FCC coordination fees.
- F. **Federal Aviation Administration (FAA) Approvals.** AMK Services will work with the buyer to obtain and license frequencies as need within the County.
- G. **Contractor Licenses.** Seller will be responsible for obtaining all contractor licenses required for the performance of its duties and obligations.

5. DELIVERY, TITLE AND RISK OF LOSS:

- A. Seller shall ship the Hardware to Buyer on or before the dates set forth in the Project Schedule. Partial deliveries shall be permitted. Seller shall remain responsible until Acceptance of the System for loss or damage resulting from the willful misconduct or negligent acts or omissions of Seller, its employees, agents, and subcontractors. Upon delivery and inventory at Buyer's location, Buyer shall keep the Hardware fully insured for the total amount of all monies then due, or yet to become due, to Seller with respect to this Agreement.

6. PRICE:

The Total Agreement Price to be paid by Buyer to Seller is Three Hundred Two Thousand Six Hundred Twelve Dollars and Fifty cents (\$302,612.50).

7. TAXES:

In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or any Products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall otherwise furnish Seller with tax exemption certificates acceptable to all applicable taxing authorities.



8. **CHANGES AND ADDITIONS:**

- 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. **Buyer Requested Changes.** Buyer 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, Seller 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 Buyer and Seller. 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. **Buyer Delays in Performance.** To the extent that Buyer fails to timely perform its obligations under the Responsibility Matrix or otherwise under this Agreement, and such failure has a material impact on the cost of Work performed by Seller under the Agreement and/or the schedule, the parties agree that Seller shall be entitled to an equitable adjustment to the Project Schedule, the Total Agreement Price, or both and that a Change Order shall be agreed to by the parties.
- D. **Concealed Conditions.** If, following Buyer's acceptance of the Detailed System Documents, Seller 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.
- E. **Product Discontinuance.** Subject to its obligation to fulfill its obligations set forth in the Agreement, Seller reserves the right to change or to discontinue any product covered by the Agreement provided that Seller agrees to make available to the Buyer a functionally equivalent replacement product equal to or better than the product discontinued at no additional cost to the Buyer.
- F. **Frequency Support and Frequency Changes.** Seller shall reasonably support Buyer in submitting the Buyer's frequency licensing applications to the Regional authorities and the Federal Communications Commission for this project. In the event that, after all commercially reasonable efforts and due diligence have been expended, the Buyer or Seller cannot obtain all of the necessary United States and Canada government approvals for the frequency plan as described in this Statement of Work and this Agreement, it shall be treated as an excusable delay event pursuant to the Excusable Delays section of this agreement for which an extension to the Project Schedule shall be granted, and Seller will diligently and expeditiously prepare and provide to Buyer a System re-design for its review and approval including all price and schedule changes. Notwithstanding anything to the contrary contained in the Agreement, the Parties agree that Seller may be entitled to an equitable adjustment to the Total Agreement Price and/or the Project Schedule for Seller's services on any such System re-design. In the event that Buyer and Seller cannot mutually agree on the System re-

design, either party may then terminate the Agreement on thirty (30) days written notice to the other Party

9. PAYMENTS:

A. The Total Agreement Price for the System Development and Optimization Services shall be paid by the Buyer to Seller as follows:

1. Fifty percent (50%) of the Total Agreement Price shall be due at Contract Execution.
2. Fifty percent (50%) of the Total Agreement Price shall be due upon completion of System Development and Optimization

B. Payment Dates

The Payment(s) associated with the event(s) above shall be due ninety (90) days following the date of Seller's invoice.

10. SUBCONTRACTING:

Seller may subcontract any portion of Work (i.e. Tower Climbs and Electrical Wiring) to be performed by Seller hereunder provided that Seller shall be responsible for the performance and Work of any such subcontractors. All lower-tier subcontractors shall be submitted for approval to Madison County/CSEPP prior to performance.

11. EXCUSABLE DELAYS:

- A. Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to: (1) causes beyond Seller'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) Seller'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 Buyer 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 Seller or occurs after delays in Seller's performance of its obligations due to other reasons.
- B. In the event of any delay or failure excused by this Section Excusable Delays, Seller shall as soon as practical notify Buyer 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 Seller by reason of the delay.

12. SELLER'S INSURANCE:

- A. In order to protect itself and Buyer, its officers, boards, commissions, agencies, employees and representatives under the indemnity and other provisions of this Agreement, Seller 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 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. Buyer shall be given ten (10) days advance notice of cancellation or nonrenewal. Within ten (10) days after execution of this Agreement, Seller shall furnish Buyer with a Certificate of Insurance listing Buyer as an additional insured. If Seller'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, Seller shall maintain coverage for the duration of this Agreement and for two years following the completion of this Agreement. Seller shall furnish Buyer, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that Seller shall furnish the Buyer with a 30-day notice of cancellation or renewal. Seller shall furnish evidence of adequate Worker's Compensation Insurance.
- B. In case of any sublet of Work under this Agreement, Seller shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage substantially equal to that required of Seller.
- C. The parties do hereby expressly agree that Buyer, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this section Seller's Insurance, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by Buyer's Risk Manager taking into account the nature of the Work and other factors relevant to Buyer's exposure, if any, under this Agreement.

13. INDEMNIFICATION:

- A. Seller shall be responsible for and agrees, to the extent as allowed by law, to indemnify, hold harmless and defend the Buyer and its boards, commissions, agencies, officers and employees from and against all liability, losses, damages, costs or expenses which the Buyer and its boards, commissions, agencies and employees may sustain, incur or be required to pay by reason of third party claims, demands and causes of action for damages resulting from personal injuries, loss of life or damage to tangible property to the extent resulting from the willful misconduct or negligent acts or omissions of Seller, Seller's officers, agents, employees, or subcontractors. Buyer agrees to notify Seller in writing as soon as practical of any third-party claim, demand or cause of action for which Buyer will request indemnification from Seller. Buyer will provide Seller with the necessary information and help to defend or settle such claim, demand or cause of action. The obligations of Seller under this paragraph shall survive the expiration or termination of this Agreement.

- B. Buyer shall be responsible for and agrees, to the extent as allowed by law, to indemnify, hold harmless and defend the Seller and its board of directors, officers and employees from and against all liability, losses, damages, costs or expenses which the Seller and its board of directors, officers and employees may sustain, incur or be required to pay by reason of third party claims, demands and causes of action for damages resulting from personal injuries, loss of life or damage to tangible property to the extent resulting from the willful misconduct or negligent acts or omissions of the Buyer and its boards, commissions, agencies, employees and subcontractors. Seller agrees to notify Buyer in writing as soon as practical of any third-party claim, demand or cause of action for which Seller will request indemnification from Buyer. Seller will provide Buyer with the necessary information and help to defend or settle such claim, demand or cause of action. The obligations of Buyer under this paragraph shall survive the expiration or termination of this Agreement.

14. PATENTS:

- A. Seller warrants that the System furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If Buyer notifies Seller promptly of the receipt of any claim that the System infringes a United States patent or copyright and gives Seller information, assistance and exclusive authority to settle and defend such claim, Seller at its own expense shall defend, or may settle, any suit or proceeding against Buyer so far as based on a claimed infringement which breaches this warranty. If, in any such suit arising from such claim, the continued use of the System for the purpose intended is enjoined by any court of competent jurisdiction, Seller shall, at its expense and option, either: (1) procure for Buyer the right to continue using the System, or (2) modify the System so that it becomes non-infringing, or (3) replace the System or portions thereof so that it becomes non-infringing, or (4) remove the System and refund the purchase price (less reasonable depreciation for use). The foregoing states the entire liability of Seller for patent or copyright infringement by the System and is subject to any limitation of total liability set forth in this Agreement.
- B. The preceding subsection (A) shall not apply to: (1) any portion of the System which is manufactured to Buyer's design, or (2) the use of the System in conjunction with any other apparatus or material not supplied by Seller to the extent that such conjoined use causes the alleged infringement. As to any portion of the System or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement.
- C. THE PATENT AND COPYRIGHT WARRANTY AND INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER PATENT AND COPYRIGHT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY.

15. LIMITATION OF LIABILITY:

- A. Except for Seller's liability to third parties for its willful misconduct or negligent acts or omissions as more particularly described in the Indemnification Section of this Agreement, the total liability of Seller, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability or otherwise, arising out of, connected with, or resulting from

the performance or non-performance of this Agreement or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Service, shall not exceed the amount paid by Buyer allocable to the particular item of Hardware, Software or Service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the Warranty Period.

- B. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF AGREEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE HARDWARE OR ANY OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR DOWNTIME COSTS.
- C. Any action for any claim of any kind for any loss or damages arising out of, connected with, or resulting from the performance, non-performance or breach of the Agreement, or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Services, shall be commenced within one (1) year after the cause of action accrued or it shall be deemed waived or barred.
- D. The provisions of this Section, LIMITATION OF LIABILITY, shall apply notwithstanding any other provisions of this Agreement or any other agreement.
- E. The provisions of this Section, LIMITATION OF LIABILITY, shall survive the expiration or termination of this Agreement.

16. REMEDIES:

- A. In the event of a material breach of this Agreement by Seller which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Seller by Buyer, Buyer shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its payment obligations under the Agreement for as long as the breach continues uncorrected; or (2) terminate this Agreement by written notice to Seller if the breach remains uncorrected. The following shall constitute material breaches of this Agreement:
 - 1. Violation by Seller of any State, Federal or local law, or failure by Seller to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations.
 - 2. Failure by Seller to carry applicable licenses or certifications as required by law.
 - 3. Failure of Seller to comply with reporting requirements contained herein.

4. Inability of Seller to perform the Work provided for herein.
- B. In the event of: (1) any failure by Buyer for ninety (90) or more days to make any payment when due, or (2) any other material breach of this Agreement by Buyer which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Buyer by Seller, Seller shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either:
1. Suspend performance of its obligations under this Agreement for as long as the breach remains uncorrected; or
 2. Terminate this Agreement by written notice to Buyer if the breach remains uncorrected.
- C. In the event Buyer terminates this Agreement as provided herein, all finished and unfinished Hardware and Documentation Deliverables produced or made by Seller for Buyer under this Agreement shall become the property of Buyer and Seller shall be entitled to receive compensation in accordance with the terms of this Agreement for any such Hardware and Documentation Deliverables. Notwithstanding the above, Seller shall not be relieved of liability to Buyer for damages sustained by Buyer by virtue of any breach of this Agreement by Seller described in subsection A above and, after providing Seller with written notice of breach as set forth in subsection A, Buyer may withhold any payments to Seller for the purpose of set-off of any damages, as agreed upon or finally adjudicated, against such payment.

17. 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.

18. COMPLIANCE:

Seller 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 Seller hereunder. Any Hardware or Software furnished by Seller 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 Seller for the effect of compliance with any such amendments.

19. 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 BUYER:
Madison County/CSEPP Kentucky
560 S. Keeneland Drive
Richmond, KY 40475

Attn:

WITH A COPY TO:

Attn:

IF TO SELLER:
AMK Services, LLC



9291 Crouse Willison Rd
Johnstown, Ohio 43031
Attn: [Greg Graham]

WITH A COPY TO:
Jim Niedermeyer
370 Highland Park Dr.
Suite B
Richmond, KY 40475

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. Amendments to this Agreement
2. This Agreement (not including the Exhibits and documents listed below).
3. Detailed System Documents
Exhibits to be tailored as applicable
4. Exhibit A - Statement of Work
5. Exhibit B – System Maintenance Agreement

20. TERM:

The term of this Agreement shall commence upon the Effective Date of this Agreement and shall run through the final acceptance of the system. The term of the Software license is set forth in the Software License Agreement.

21. 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.

22. 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.

23. 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.



24. 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 Buyer of any breach of the covenants of this Agreement or a waiver of any default of Seller and the making of any such payment by Buyer while any such default or breach shall exist shall in no way impair or prejudice the right of Buyer with respect to recovery of damages or other remedy as a result of such breach or default.

25. HEADINGS:

Section headings are inserted for convenience only and shall not be used in any way to construe the meaning of terms used in this Agreement.

26. GOVERNING LAW:

It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Madison County Kentucky Law shall be controlling. Venue for any legal proceedings shall be heard in Madison County Court of the State of Kentucky.

27. ASSIGNMENT; SUCCESSORS AND ASSIGNS:

This Agreement shall not be assigned nor any interest or obligation in this Agreement transferred by either Party without the written consent of the other Party, which shall not be unreasonably withheld or delayed. Notwithstanding the above, Seller may assign this Agreement, without consent, (a) in whole or in part, to an affiliate or subsidiary or (b) in the event of a change of controlling ownership interest (either directly or indirectly) in Seller or in the event of merger, recapitalization, consolidation, other business combination or sale of all or substantially all of the assets of Seller. In addition, Seller may also assign or transfer, without consent, claims for money due or to become due Seller from Buyer under this Agreement to a bank, trust company or other financial institution if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to Seller shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement. Seller shall promptly provide to Buyer notice of any such permitted assignment or transfer without consent.

December 15, 2020

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement.

BUYER

MADISON COUNTY/CSEPP

By: [Signature]
Name: Reagan Taylor
Title: Judge Executive
Date: 12/15/2020

WITNESS: Robyn Fayne

Witness Name: ROBYN FAYNE

By: [Signature]
Name: Austin S Heiser
Title: Director EMA
Date: 12/24/2020

SELLER

AMK SRVICES, LLC

By: [Signature]
Name: Greg Graham
Title: President
Date: 12/29/2020

WITNESS: [Signature]

Witness Name: JAMES P. Neekermeyer



28. LIST OF EXHIBITS

A. STATEMENT OF WORK



EXHIBIT A

STATEMENT OF WORK

Attached as separate Document

EXHIBIT A. STATEMENT OF WORK

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1. SYSTEM OPTIMIZATION PLAN

As part of the three phased approach to implementing a P25 Radio System Upgrade, AMK Services is offering the following Scope of Work for Phase 1 – System Optimization. This Scope of Work will include the following.

- System RF Design
- Microwave Feasibility Study
- Tower/Structural Review
- Shelter Analysis
- Site Grounding
- BRN Network Connectivity
- Core Control Analysis
- Ancillary Systems
- Fleet Mapping

After the audit is complete, AMK Services will work with Madison County/CSEPP administrators to develop a list of required materials for the following system upgrades. These will include.

- L3Harris Infrastructure
- L3Harris Terminals
- Nokia Microwave System
- Antenna Systems
- UPS Systems
- Logging Recorders
- Shelter Refurbishments
- BDA Systems

2. SYSTEM RF DESIGN

The coverage design for the Madison County/CSEPP simulcast system will be performed using L3Harris' Radio Analysis and Propagation Tool Repository (RAPTR) design software. RAPTR is an advanced coverage design and engineering software package employing a suite of design modules, allowing a system to be managed from the initial site selection process, through the detailed coverage design, frequency planning, and finally coverage acceptance.

RAPTR was developed and is maintained by Harris' RF Integrity group. This group maintains the databases that are used by RAPTR. The RF Integrity group also develops new design modules and features that are required to meet special customer requirements.

RAPTR uses several advanced features that make it well suited for accurately designing Land Mobile Radio (LMR) systems ranging in size from a single site to larger simulcast systems such as that for Madison County/CSEPP.

2.1 MADISON COUNTY P25 SYSTEM

The table below denotes the existing site facilities that will be re-used. AMK Services and its selected subcontractor will perform the site analysis and recommended improvements for each site.

Site Name	Tower	Shelter	Generator	UPS Battery Plant
EOC	Existing	Existing / Updates	Existing	New
Enterprise	Existing	Existing / Updates	Existing	New
Lex Road	Existing	Existing / Updates	Existing	New
Berea	Existing	Existing / Updates	Existing	New
North Bound	Existing	Existing / Updates	Existing	New
Old Highway 25	Existing	Existing / Updates	Existing	New
Jolly Ridge	Existing	Existing / Updates	Existing	New
Moberly	Existing	Existing / Updates	Existing	New
Big Hill	Existing	Existing / Updates	Existing	New

2.2 IN BUILDING COVERAGE

AMK Services will work with Madison County/CSEPP to determine a list of critical buildings located throughout the region which require 95% DAQ 3.4 20dB in-building portable coverage. AMK



Services will perform an in-building coverage analysis on each building to determine its current level of coverage. A BDA proposal will be provided for those locations that would not meet the 95% coverage requirement.

3. MICROWAVE FEASIBILITY STUDY

AMK Services will work with Madison County to identify all required microwave backhaul links, as well their required bandwidth and reliability. AMK Services will perform feasibility studies, and visual surveys of each path and existing Madison County/CSEPP tower sites. This inspection will include line of site verification to account for obstacles such as tree growth and building obstructions.

In addition to the Madison County CSEPP existing sites, AMK Services will perform a feasibility study and visual surveys for the following links;

- Jolly Ridge to Patterson Office Tower (POT)
- POT to Georgetown EMA

Lastly, AMK Services will conduct analysis for additional microwave configurations to allow for increased bandwidth to support future growth and ancillary equipment which could be supported on the network.

4. TOWER/STRUCTURAL REVIEW

AMK Services will perform tower analysis to verify the existing towers' integrity for existing tower loads plus any changes for the new design. The AMK Services team will review each tower and recommend the best location to mount new system antennas. A structural analysis will be conducted for all 9 sites by an approved tower analysis firm. We will present this data at the Detailed System Review.

5. SHELTER ANALYSIS

As a part of this Scope of Work, AMK Services in conjunction with VFP Inc. will conduct a thorough evaluation of all existing Madison County/CSEPP P25 Radio Network Sites. This inspection will include the following tasks

- Examine the roof and determine if there is any damage that impacts the waterproof envelop of the shelter or structural capacity
- Inspect the walls and determine if the building's waterproof envelope or structural integrity is compromised
- Check the doors, weather stripping and door hardware to determine if the door is still secure and protecting against water or higher levels of dust and dirt, rotten or unwanted personnel intrusion
- Inspect all exterior penetrations to ensure they are all still of a manner that will resist water, dirt, dust, rodent infiltration
- Examine the floor for rot, if there is wood underlayment, water intrusion and see if it is still maintaining the floor load



- Inspect the interior for water penetration and assess origins if such evidence is found
- Inspect all electrical components, (PP1s, tech panels, safety switches, enclosed circuit breakers, surge arrestors etc., to determine if they suit the current electrical loads and are in a safe and working order
- Inspect all interior and exterior lights and note if they are up to the latest energy efficiency standards
- Inspect all outlets interior and exterior to determine if they are in a safe working order
- Inspect all grounding to see if any of it needs to be replaced or repaired
- Inspect all HVAC units and fan systems in the shelter to ensure they are all in a working order
- Inspect all fire extinguishers to see if they up to date
- Inspect all subsystems such as FM 200, DC plants, UPS systems, battery stacks to ensure it is in a working order
- Inspect all generators at site that are inside the shelter
- Inspect wave guide entries, cable ladder wireway, etc.
- Provide a written inspection report

6. SITE GROUNDING

Our grounding system design goal for new ground systems is a measurable 5 ohms resistance or less between any connected point on the ground bus and earth ground. This goal assumes that soil conditions local to the RF site are typical, conducive to good grounding systems and the RF site geography can receive a standard grounding system. Where these conditions do not exist, or a 5 ohms resistance cannot be reasonably obtained, then the target ground system resistance should be at least 400% better than the resistance of the site's AC ground rod located at the AC meter.



The following procedures will be performed at each site.

- Visually check all ground connections
- Ohm each ground leaving the building
- Meg test ground system and record readings
- Take photos

For each new external grounding system installed, AMK Services develops and provides Madison County/CSEPP a design that meets the Harris procedure Site Grounding and Lightning Protection AE/LZT 123 4618/1.

7. BRN NETWORK REGIONAL CONNECTIVITY

AMK Services will work with Madison County/CSEPP to determine primary and secondary core locations as well as all necessary redundancy and future growth needs. Considerations will also be made in integration with current and future regional partners.

- Madison County/CSEPP P25 System
- University of Kentucky P25 System
- Georgetown/Scott County P25 System
- VHF P25 Systems
- UHF P25 Systems
- Customer specific network services

Systems such as network infrastructure, core servers, and radio infrastructure should be sized to support current regional partners and additional configurations throughout the region. Considerations should be made to ensure the regional system and its sub-systems maintain proper availability as well as individual autonomy in the event of regional outages.

8. ANCILLARY SYSTEMS

AMK Services will work with Madison County/CSEPP to develop local and regional interoperability requirements. These could include interfacing legacy systems directly to the core, permitting outside P25 compliant radios access, and direct network connectivity to neighboring P25 networks.

As part of this review process, AMK Services will work to determine the current operational needs of the NOAA system and determine long term NOAA requirements and configurations.

9. FLEET MAPPING

The final radio procurement and upgrade plan will be finalized at the Detailed System Review (DSR). AMK Services and Harris will work with the Madison County/CSEPP stakeholders to identify the number and type of existing radios they wish to upgrade, as well as the quantity of new radios they want to procure. Once these radio quantities are finalized, AMK Services can provide a detailed plan to accommodate the programming, training, install and removal of radios into the final transition plan.

Table 1 Sample UAS Plan

Fleet mapping is a tool used to understand how agencies and dispatchers communicate daily. As part of the Fleet Mapping review process, AMK Services will work with Madison County/CSEPP to create both a local fleet map as well as a integrated fleet map for use with the BRN Plan. Table 1 shows a sample of how the fleet map structure is created. Fleet mapping is a task that will require direct end user participation. The project's success requires the project team to complete fleet mapping early in the project as the fleet map is a critical foundation upon which the end users' experiences are built. AMK Services will be meeting with each agency and dispatchers to fully understand their operations so that we can enable them to fully utilize the new P25 Radio Networks features.

UNIFIED ADMINISTRATION SYSTEM (UAS) PLAN							
AGENCY ID	AGENCY	CATEGORY	EXPECTED NUMBER OF USERS	USER ID RANGE	IP RANGE	CAPACITY	TALK GROUP IDS
50	System Wide	Talk Group					500-599
200	Georgetown/SC Wide	Talk Group					2000-2999
210	Georgetown/SC Law Enforcement	User	1000	0001-9994	10.128.64.1 - 67.255	1000	2100-2199
220	Georgetown/SC Fire & EMS	User	1000	0001-9994	10.128.68.1 - 70.255	1000	2200-2299
230	Georgetown/SC Emergency Management	User	1000	0001-9994	10.128.71.1 - 74.255	1000	2300-2399
240	Georgetown/SC Public Works and Roads	User	1000	0001-9994	10.128.75.1 - 78.255	1000	2400-2499
250	Georgetown/SC Administrative	User	1000	0001-9994	10.128.79.1 - 82.255	1000	2500-2599
260	Georgetown/SC Reserved	User	250	0001-9994	10.128.83.1 - 83.255	250	2600-2699
270	Georgetown/SC Interoperability	User	250	0001-9994	10.128.84.1 - 84.255	250	2700-2799
280	Georgetown/SC Reserved	User	250	0001-9994	10.128.85.1 - 85.255	250	2800-2899
290	Georgetown/SC Reserved	User	250	0001-9994	10.128.86.1 - 86.255	250	2900-2999
552	Georgetown/SC Dispatch	PSAP	250	0001-9994	10.128.87.1 - 87.255	250	

Once the Fleet Map has been developed, radio programming templates will be created. While discussing fleet mapping with the user groups, we will also develop their radio's personalities feature set. We want to ensure that each user can maximize the potential that the proposed terminals offer and guarantee that they feel comfortable with the new technology in their hands.

10. RESPONSIBILITY MATRIX

Tasks	AMK Services	Madison County
Designate a AMK Services project manager	☆	
Designate a Madison County project manager		☆
Manage the AMK Services project team	☆	
Establish project communications protocol and maintain communications log as required	☆	
Review change orders with AMK Services project manager and provide approval		☆
Review and approve submitted design documents within two weeks or respond with revisions		☆
Provide written approval for major milestones such as DDR, staging, ATP, and final acceptance		☆
Provide timely responses to issues and questions		☆
Coordinate with federal, state, and local government agencies, as required		☆

Designate system administrators		☆
Provide access to all buildings and sites, including any temporary ID badges required for project team		☆
Take part in meeting for high level network and microwave backhaul design to identify all connections, bandwidth, and reliability needs	☆	☆
Perform detailed microwave path analysis modeling and physical path studies	☆	
Develop detailed network and microwave design documents	☆	
Provide all requirements for coverage		☆
Develop coverage design and subsequent test plan based on requirements	☆	
Perform in-building coverage analysis on all required buildings and develop BDA/DAS scope of work	☆	
Provide access to all buildings requiring in-building coverage analysis		☆
Perform site walks to identify all additions, upgrades, and/or maintenance on shelters, towers, and compounds.	☆	☆
Perform site grounding analysis and identify all necessary maintenance and/or upgrades	☆	
Develop detailed scope of work identifying all civil related work to be performed	☆	
Participate in fleet mapping workshop required to identify all required communications paths between any local and regional agencies	☆	☆
Work with individual user groups to identify specific subscriber template needs	☆	☆
Develop detailed fleet map plan and subscriber templates based on fleet mapping workshop and user group meetings	☆	
Prepare detailed design review identifying and describing all necessary infrastructure and subscriber devices required to meet customer requirements	☆	
Participate in detailed design review meeting	☆	☆

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.

26. 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.

27. 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 Buyer of any breach of the covenants of this Agreement or a waiver of any default of Seller and the making of any such payment by Buyer while any such default or breach shall exist shall in no way impair or prejudice the right of Buyer with respect to recovery of damages or other remedy as a result of such breach or default.

28. HEADINGS:

Section headings are inserted for convenience only and shall not be used in any way to construe the meaning of terms used in this Agreement.

29. GOVERNING LAW:

It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Madison County Kentucky Law shall be controlling. Venue for any legal proceedings shall be heard in Madison County Court of the State of Kentucky.

30. ASSIGNMENT; SUCCESSORS AND ASSIGNS:

This Agreement shall not be assigned nor any interest or obligation in this Agreement transferred by either Party without the written consent of the other Party, which shall not be unreasonably withheld or delayed. Notwithstanding the above, Seller may assign this Agreement, without consent, (a) in whole or in part, to an affiliate or subsidiary or (b) in the event of a change of controlling ownership interest (either directly or indirectly) in Seller or in the event of merger, recapitalization, consolidation, other business combination or sale of all or substantially all of the assets of Seller. In addition, Seller may also assign or transfer, without consent, claims for money due or to become due Seller from Buyer under this Agreement to a bank, trust company or other financial institution if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to Seller shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement. Seller shall promptly provide to Buyer notice of any such permitted assignment or transfer without consent.