



**E-911 MANAGED SERVICES
AGREEMENT**

- Parties.** ProComm Alaska LLC (hereinafter referred to as "PCA"), the corporate address of which is 2100 E. 63rd Ave, Anchorage, Alaska 99507 and City of Bethel, 300 State Hwy, P.O. Box 1388, Bethel, AK 99559 (hereinafter sometimes referred to as "Customer").
- Terms.** This agreement shall be in full force and effect for a period 60 months (5 years), beginning on July 1, 2016, and ending on June 30, 2021.
- Maintenance Charge.** For services throughout the selected term, Customer shall pay PCA a total of two hundred three thousand, three hundred thirty-five dollars (\$203,335.00). Unless provided for to the contrary in this agreement, otherwise limited in Schedule A to this agreement, or increased by a written change order, such maintenance charge shall represent the total compensation paid to PCA by the customer for all of the services and parts necessary to furnish the maintenance services which are the subject of this agreement.
- Payment of Charges.** All maintenance charges and fees payable by Customer to PCA under this agreement are payable as follows:

Payment Amount	Due Date	For the period:
\$100,000.00	May 15, 2017	July 1, 2016 - June 30, 2017
\$ 25,833.75	July 15, 2017	July 1, 2017 - June 30, 2018
\$ 25,833.75	July 15, 2018	July 1, 2018 - June 30, 2019
\$ 25,833.75	July 15, 2019	July 1, 2019 - June 30, 2020
\$ 25,833.75	July 15, 2020	July 1, 2020- June 30, 2021
\$203,335.00		Total over 5 years

Any such payments which are delinquent for a period in excess of thirty (30) days shall constitute a material default under this agreement.

- Reinstatement Fee.** If the Support Program is not renewed prior to expiration of the existing term or grace period, then the Customer, in addition to being charged the applicable Support Program Renewal Fee, may also be subject to the prevailing Support Program Reinstatement Fee as set forth in the applicable price list upon Support Program renewal.
- Maintenance Responsibilities.** Equipment Maintenance and repair: Except as is expressly provided for to the contrary in this agreement, PCA shall provide Customer with all routine and remedial maintenance, including labor and parts, necessary to keep the subject communications equipment operating according to manufacturers specifications. PCA does not warranty, nor will PCA be responsible to correct by reason of this agreement, the system design, coverage areas, or adequacy of the system to meet the needs of the customer that are in place at the time this agreement is executed. Unless expressly provided for in this agreement, console & RF systems, antenna systems, power supplies and UPS systems, and telco circuits and lines are excluded. Repairs to these components, or management of third party assessment or repair will be provided by PCA at Customer's expense based upon PCA's then prevailing rates and prices, including overtime rates. All of PCA's maintenance responsibilities under this agreement shall be limited to customer's private communications systems equipment purchased or leased from PCA, unless other equipment is specifically included in writing. All routine and remedial maintenance and repairs shall be performed by PCA at such times as do not unreasonably interfere with Customer's business operations. Unless on-call or managed services are specified in this agreement, PCA shall not be required to furnish any maintenance on weekends, holidays or after normal business hours. Additionally, any damage to the subject equipment caused by Customer negligence, tampering, or misuse, either accidental or intentional, shall not be covered under this agreement. All such extra maintenance shall be at Customer's expense based upon PCA's then prevailing rates and prices, including overtime rates. PCA will not be responsible for conditions beyond its control, to include without limitations, flood, fire, earthquakes, weather, or other acts of God or other causes outside normal usage and/or unavailability of parts due to manufacturer's discontinuance of equipment.
- Remote Monitoring and Support Services.** In addition to the hardware maintenance and repair responsibilities indicated above, this Agreement includes remote monitoring and support services offered by Airbus DS Communications. In order to keep the Support Program active, the Customer is required to:



- (1) Maintain an Airbus DS Communications application software and Firmware release that is current version or current version minus one. The application software and firmware release dates are determined by the date of the related product release notice as specified in the applicable published Product Change Notice (PCN);
 - (2) Pay all applicable Support Program Fees;
 - (3) Comply with all terms and conditions of this Support Program.
8. **Subject Equipment.** All of PCA's maintenance obligations under this agreement shall be limited to the communications system equipment listed on **Schedule A: Subject Equipment** on pages 5-6 of this Agreement.
9. **Customer's Operating Environment Responsibilities**
- *Hardware Operating Environment.* It is the Customer's responsibility to ensure that the hardware operating environment is fully functional and meets Airbus DS Communications, and OEM minimum operating requirements. In the event a software or firmware upgrade available hereunder requires a hardware upgrade to implement, Customer is responsible for the cost of such hardware upgrade.
 - *Operating System and Ancillary Software and Firmware Environment.* It is the Customer's responsibility to ensure that the operating system and ancillary software and firmware are fully functional, commercially available (except as otherwise agreed in writing by Airbus DS Communications) and meet Airbus DS Communications' minimum operating requirements for Airbus DS Communications' software and firmware product(s). However, Airbus DS Communications may provide service pack updates for operating systems when applicable and available by the respective manufacturer. In the event a software or firmware upgrade provided hereunder requires an operating system and/or ancillary and/or third party software or firmware upgrade to implement, Customer is responsible for the cost of such operating system and/or ancillary and/or third party software or firmware upgrade.
10. **Application Software and Firmware Program Fixes.** Application software and firmware program fixes are defined as resolutions to problems that result from a defect in the application software or firmware product or supplied documentation. Customers will be notified of the availability of program fixes by PCA via a copy of an Airbus DS Communications Product Change Notice. PCA will then order the program fix at no additional charge provided that the Support Program is in effect. The program fix will be available only within the current release of the product and subsequently will be incorporated into future software or firmware program updates. For the sake of accurate clarification as to the detected problem, the Customer is required to submit a written description of the problem including date, time, position, any diagnostic data, and a general description of the problem. Such written description shall be sent to, or provided electronically by PCA to Airbus DS Communications' Technical Support Center.
11. **Application Software and Firmware Program Updates**
Application software and firmware program updates are defined as minor enhancements to the already purchased product feature / functionality set. A product change is classified as minor, in the discretion of Airbus DS Communications, based upon the impact of the change to the core functionality of the product. Customer will be notified by PCA via an Airbus DS Communications Product Change Notice, of all application software and firmware program updates, which occur within the term of the Support Program. PCA shall then order the update at no additional charge provided that the Support Program is in effect. Application software and firmware program updates will roll into the existing Support Program, thereby not extending the term of the Support Program. Any change in the two numbers following the decimal point within the product version number constitutes an application software program update (for example a change from product version 1.10 to 1.20, or 2.11 to 2.12, or 3.20 to 3.30 et. al. will represent an application software program update). A change from PSC15 version A to PSC15 version B will represent a firmware program update. However, the costs of upgrades to software (i.e. an upgrade from product version 1.0 to product version 2.0) are not included in this Agreement.
12. **Exclusive Maintenance Rights.** Customer shall neither cause nor suffer any maintenance, repairs, alterations or modifications to the subject systems and/or equipment by any party other than PCA during the term of this agreement, unless expressly agreed to in writing in advance by PCA. In the event of any such unauthorized maintenance, modifications, alterations or repairs cause or necessitate any corrective maintenance by PCA, all such corrective maintenance shall be made at Customer's expense, based upon PCA's then prevailing rates and prices.
13. **Service Contacts.** PCA shall provide Customer with a telephone number and contact point sufficient to enable Customer to notify PCA during the latter's normal business hours that remedial maintenance is required. In the event on-call or managed service is included in the listed services, after hours contact information will also be provided.



14. **Hardware Repair.** PCA will maintain the equipment owned by Customer and Customer's inventory of spares, as listed in Schedule A: Subject Equipment, according to the industry standard for routine and remedial maintenance. Accordingly, in the event of the malfunction of any listed hardware, PCA will install and configure Customer's system spare and then return the defective component to the manufacturer for repair or replacement at the manufacturer's option. Upon return of the repaired component, the repaired component will become the spare. In the event of the unavailability of any component not included in Customer's spares inventory, PCA's sole responsibility shall be to secure a replacement part as soon as is economically possible, and PCA shall not be liable or responsible to Customer for any failure to have such part in stock. PCA's obligations to furnish replacement parts under this agreement during the course of its maintenance services shall be limited to providing standard parts of equal quality. Common computer equipment which is ancillary to the system but not proprietary to the system, such as keyboards, mice, printers, etc. that would be more economical for Customer to replace through Customers' IT vendors, are not listed, nor will they be covered in the event replacement is necessary.
15. **Warranties.** Except as expressly set forth in Sections 6, 7, 10, & 11 above or in a contract signed by an officer of ProComm Alaska LLC, ProComm Alaska makes no warranties, expressed or implied, including warranties of merchantability or fitness for a particular purpose, in connection with materials or work order and the transactions contemplated hereby. IN NO EVENT SHALL PROCOMM ALASKA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF OR RELATED TO MATERIALS, SOFTWARE, OR LABOR, OR THE PERFORMANCE OR BREACH HEREOF. EVEN IF PROCOMM HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, PROCOMM'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE CHARGES PAID TO PROCOMM HEREUNDER BY CUSTOMER.
16. **Economic Damages.** PCA shall not be responsible for any direct, indirect, incidental or consequential economic damages, including, but not limited to, damages to reputation or lost profits arising from the malfunction or loss of use of the subject equipment as a result of any failure on its part to fully, faithfully or timely provide maintenance services and/or parts under this agreement.
17. **Force Majeure.** PCA shall not be responsible for any failure on its part to furnish maintenance services or replacement parts under this agreement due to causes beyond its practical control, including, but not limited to, work stoppages, strikes, boycotts, embargoes, lockouts, transportation delays, fires, floods, earthquakes, casualties, civil disobedience's, riots, rebellions, acts of God, parts shortages or similar occurrences.
18. **Modifications.** In order to keep the subject communications system equipment in good operating conditions, PCA shall have the option to, but not the responsibility for any modifications to the equipment which it may deem necessary or desirable, it is sole and absolute discretion. PCA shall endeavor to make all such modifications at such times and in such a manner so as to not unreasonably interfere with Customer's business operations. However, PCA shall have the right to make all such modifications during its normal business hours. A refusal on the part of the Customer to permit any such modifications shall constitute a wrongful and material default by Customer under this agreement.
19. **Default.** If Customer (a) does not timely pay all of the charges and amounts due PCA under this agreement, (b) ceases doing business as a going concern, (c) suffers or causes a petition to be filed by or against it under any of the provisions or chapters of the Bankruptcy Act, as amended, (d) makes an assignment for the benefit of its creditors, (e) calls or participates in a general meeting of its creditors and attempts any informal arrangement, extension or composition of its debts, (f) suffers or causes the appointment of a receiver to control any of its properties or (g) defaults under any of the agreements pursuant to which it leased or purchased any of the subject communications systems equipment, or if PCA reasonably deems its rights and interests under this agreement and/or to the subject communications systems equipment to be in jeopardy, then in any such event, PCA shall, in addition to any other legal remedies it may have, have the right, at its option, to suspend performance under this agreement or terminate it without notice or further liability to Customer. In addition, PCA may also terminate this agreement without notice or further liability or obligation to Customer in the event that Customer (a) violates any space, use, electrical, maintenance or environmental requirements for the subject communications systems equipment, (b) moves the subject communications systems equipment without the express written consent of PCA (which may not be unreasonably withheld by PCA), or (c) suffers or causes any unreasonable damages to or use of the subject equipment which requires the furnishings of excessive maintenance services or replacement parts on the part of PCA.
20. **Early Termination.** Customer shall, at its option, have the right to terminate all of its unmatured obligations under this agreement on sixty (60) days prior written notice to PCA subject to (a) the prior satisfaction in full of all its matured obligations to PCA. Customer hereby affirms that PCA has no responsibility to repay any portion of any advance annual maintenance charge, and that any such amounts constitute liquidated damages. Customer acknowledges, represents and



warrants that such liquidated damages are reasonable and have been agreed upon due to the difficulty of measuring the damages PCA would suffer in the event of any such early termination of the agreement by the Customer. Customer hereby waives any and all rights to claim that such liquidated damages would be or do constitute an unenforceable penalty and not liquidated damages.

- 21. **Termination due to Non-Availability of Funds** (for Government Subscribers Only).
If Customer fails to receive sufficient appropriation of funds or authorization for the expenditure of sufficient funds to continue service under this agreement, or if funds appropriated or authorized by the Governing Body are in such amounts as to preclude making the payments set out therein, Customer may submit a written notice to PCA seeking cancellation of the service. User shall provide PCA with written notice not less than sixty (60) days prior to the date of cancellation, and shall include a written statement documenting the reason for cancellation, including the relevant financial decision and an official document certifying the non-availability of funds (e.g., executive order, an officially printed budget or other official government communication). Upon PCA's receipt of a valid cancellation notice, User shall pay all charges incurred for any products and/or services received prior to the effective date of the cancellation.
- 22. **Amendment.** No amendment to or of this agreement shall be effective unless it is in writing and is executed by authorized representatives of all of the parties in this agreement.
- 23. **Entire Agreement.** This written agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior or contemporaneous agreements, oral or written, between the parties with respect to such subject matter which are not included herein.
- 24. **Applicable Law. Jurisdiction and Venue.** This agreement and the respective rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Alaska and the United States of America. In the event that a dispute should arise with respect to this agreement, the exclusive jurisdiction and venue therefore shall lie with the Superior Court for the Third Judicial District of the State of Alaska, at Anchorage, Alaska, or alternatively, the United States District Court for the District of Alaska, at Anchorage, Alaska, unless Federal Law would require the contrary.
- 25. **Assignment.** Neither the benefits nor the obligations of Customer under this agreement are assignable without the express written consent of PCA which may be withheld by PCA in its sole and absolute discretion, and any such purported assignment shall be null and void.
- 26. **Interest, Costs and Attorney's Fees.** All payments of moneys due PCA under this agreement which are delinquent for a period in excess of thirty (30) days shall bear simple interest at the maximum legal interest rate which may be agreed upon in contract as of the effective date of this agreement. In the event that Customer defaults in the full, faithful and timely performance of all of its obligations and duties under this agreement and PCA is either forced or elects to seek legal redress for such default, Customer shall be obligated to reimburse PCA for all of the actual legal costs and attorneys' fees which are reasonably incurred by PCA in seeking such legal redress.

IN WITNESS WHEREOF, the parties have entered into and executed this agreement at Anchorage, Alaska, this 17th day of May, 2017.

ProComm Alaska LLC

By Linda Peters

Linda Peters
Title: Chief Administrative Officer

City of Bethel

By Peter Williams

Peter Williams
Title: City Manager



SCHEDULE A: SUBJECT EQUIPMENT

Hardware		
<i>Qty.</i>	<i>Part No.</i>	<i>Description</i>
VESTA® 9-1-1 Essentials Package		
2		HP Servers
2		TS-2's with cables
2		HP Switches
2		TL601A-R2 Datasharer
4		4 Port FXO Gateways
2		4-Port FXS Gateways
1		Server KVM and cables
1		HP EliteDesk Mini Workstation
1		20" Widescreen Monitor
1		SAM PC Speaker
VESTA® Workstation Equipment		
2	64007-50021	KEYPD 24K 12F USBCBL CP24
2	02800-20500	HDST 4W MOD ELEC MIC BLK
2	03044-20000	HDST CORD 12FT 4W MOD BLK
Network Equipment		
1	03800-03030	FIREWALL- MODEM 60CM
2	04000-26201	SWITCH 2620 24-PORT
Peripherals & Gateways		
1	04000-00129	MED 1000B CHASSIS BNDL
1	04000-00186	SW SPT M1000 GATEWAY 1YR
1	04000-00152	MED 1000 1-SPAN BNDL
1	04000-00191	SW SPT M1000 T1 MOD 1YR
Time Synchronization Equipment		
1	04000-09485	NETCLOCK 9483 +OCXO+3PORT
1	04000-09384	PWR SPLY NETCLOCK 93XX
1	04000-08177	DISPLAY CLOCK 4IN LED
1	04000-08181	DIGI DSPLY CLOCK AND PWR
1	04000-08230	GPS/GNSS OUTDOOR ANTENNA



1	04000-08231	GPS ANTENNA POST MT KIT
1	04000-08228	GPS ANTENNA SURG PROTECTR
1	04000-20601	GND KIT FOR 8226
1	04000-07051	GPS ANTENNA CBL 50FT
1	04000-07108	CBL GPS ANTENNA 100FT

SIP PHONES		
2	04000-06737	AASTRA 6757I SIP Phone
2	04000-01675	AASTRA 675I 20K Expansion Module
2	04000-51027	Pwr Supply AASTRA Phones

SOFTWARE	
	<i>Description</i>
	<i>VESTA E 911 Basic</i>
	<i>PEAbody 4.5 (VM'd on VESTA-A Server)</i>
	<i>VESTA Analytics</i>
	<i>VESTA™ Locate Mapping</i>
	<i>VESTA® 9-1-1 CDR Module</i>
	<i>CAD Interface</i>
	<i>Datasharer</i>