

**MANAGED SERVICES & MAINTENANCE
AGREEMENT**

1. **Parties.** ProComm Alaska LLC (hereinafter referred to as “PCA”), the corporate address of which is 2100 E. 63rd Ave, Anchorage, Alaska 99507 and the Municipality of Skagway Borough Police Department, the address of which is at 700 Spring St, Skagway, AK. 99840 (hereinafter sometimes referred to at “Customer”).
2. **Terms.** This agreement shall be in full force and effect for a period of five (5), beginning on _____ (the date of System Acceptance, 2017, and continuing until _____, 2021 (5 years from the date of System Acceptance), and shall be extended for a like term unless thirty (30) days prior written notice of cancellation is timely given by either party to the other.
3. **Definitions:** For the purpose of this Agreement the term “Maintenance” shall mean routine inspections and tuning of subject equipment that keeps (maintains) the unit or system within manufacturer’s specifications which are performed annually, and shall include all costs of travel, accommodations, and per diem related to these services. “Repair” shall mean the correction of defects, and shall not include expenses for travel, accommodations, and per diem related to these services. “Managed Services” shall include all activities related the Maintenance Program which shall be listed in **Appendix A: Maintenance Program** which is attached and incorporated into this agreement.

4. **Managed Services Charge.** Customer shall pay PCA a fixed annual charge according to the following table:

Year 1:	\$19,492.00	2017
Year 2:	\$20,518.00	2018
Year 3:	\$21,598.00	2019
Year 4:	\$22,734.00	2020
Year 5:	<u>\$23,932.00</u>	2021
Total Contract over 5 years	\$108,274.00	

Unless provided for to the contrary or otherwise limited in **Appendix A: Maintenance Program** such maintenance charge shall represent the total compensation paid to PCA by the customer for all Maintenance and Managed Services described in Appendix A of this Agreement. The charges will also be increased as necessary to cover services related to equipment additions to the system.

5. **Payment of Charges.** All maintenance charges and fees payable by Customer to PCA under this agreement are payable in advance and shall fall due on the beginning of each annual maintenance period during the term of the agreement. Any such payments which are delinquent for a period in excess of thirty (30) days shall constitute a material default under this agreement.
6. **Maintenance Responsibilities.** Equipment Maintenance: Except as is expressly provided for to the contrary in this agreement, PCA shall provide Customer with all routine maintenance as set forth in **Appendix A**, 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. Repairs to these components will be provided by PCA at Customer’s additional expense based upon the rates and prices as indicated in **Appendix A**. 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 repair 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 it’s control, to include without limitations, flood, fire, earthquakes or other acts of God or other causes outside normal usage and/or unavailability of parts due to manufacturers’ discontinuance of equipment.
7. **Subject Equipment.** All of PCA’s maintenance obligations under this agreement shall be limited to the communications system equipment listed on the attached sheet labeled **Appendix “B”**. Preexisting equipment and equipment added during the term of this agreement shall be excluded unless added through a written addendum to this agreement. All costs of maintenance of excluded equipment shall be the responsibility of Customer in addition to this agreement.

8. **Special Terms and Conditions.** The terms and conditions listed in the Appendices of this Agreement are as much a part of this agreement as those printed on the face of it and which Customer acknowledges that he has read.
9. **Customer Responsibilities.** Customer shall provide adequate working space, heat, light, ventilation and electrical power for all PCA maintenance personnel and shall be responsible for maintaining adequate power, temperature, humidity, system ground and radio frequency interference limits and other reasonable environmental considerations and specifications as may be set by the Manufacturer of the subject systems equipment or PCA before or during the term of this agreement. In addition, Customer shall perform the responsibilities set forth as Customer Deliverables in Appendix A.
10. **Exclusive Maintenance Rights.** Customer shall neither cause nor suffer any maintenance, repairs, alterations, additions, or modifications to the subject systems and/or equipment by any party other than PCA during the term of this agreement unless expressly agreed upon in writing in advance by PCA. Any such unauthorized maintenance, modifications, alteration, addition, whether or not they produce a requirement for corrective action on the part of PCA shall constitute a wrongful and material default by Customer under this agreement.
11. **Service Contacts.** PCA shall provide Customer with a telephone number and point of contact sufficient to enable Customer to notify PCA during the latter's normal business hours of system issues so that Technical support can be provided. In the event on-call or managed service is included in the listed services, after hours contact information will also be provided.
12. **System Spares:** PCA shall recommend to Customer as part of this contract, a list of system spares that Customer will purchase and secure on Customers' site(s). These system spares will be repaired and maintained by Customer and are essential in the readiness of Customer to address system defects as they arise. These spares will be the property of Customer.
13. **Replacement Parts.** In addition to the above, PCA will strive to maintain an adequate inventory of repair parts and accessories to assure that repairs can be purchased and furnished on a timely basis. However, Customer expressly acknowledges and understands that it would be uneconomical for PCA to maintain a sufficient inventory of replacement parts to assure that PCA will always have sufficient parts available in stock to repair *any and all* defects and malfunctions which may occur from time to time in the subject equipment. Accordingly, in the event of the unavailability of any such part, PCA's sole responsibility shall be to use its best efforts to secure a required replacement part which is out of stock 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 program shall be limited to providing standard parts of equal quality. All such parts which have been replaced shall become the sole and exclusive property of PCA.
8. **Warranties.** Except as expressly provided for the contrary herein, PCA disclaims any and all warranties, expressed or implied, but not limited to any and all IMPLIED WARRANTIES OF MERCHANTABILITY and/or FITNESS FOR PARTICULAR PURPOSE relating to, arising out of its obligations to furnish maintenance services, and/or parts under this agreement.
9. **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.
10. **Indirect or Consequential Damages.** In no event shall ProComm Alaska be liable to Customer, its employees, agents, subcontractors or any other individual for any indirect, special or consequential damage or lost profits arising out of or related to materials or work or the performance of 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.
11. **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.
12. **Modifications.** In order to keep the subject communications system equipment in good operating condition, 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.

13. **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 or modifies 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 additional maintenance, managed services, or Technical support on the part of PCA.
14. **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.
15. **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.
16. **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.
17. **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. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction and venue for any dispute or action of any kind or any nature arising out of this Agreement or the performance of this Agreement.
18. **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 *ab initio*.

IN WITNESS WHEREOF, the parties have entered into and executed this agreement at Anchorage, Alaska, this _____ day of _____, 2016.

SELLER: ProComm Alaska LLC

BUYER: Municipality of Skagway Borough, AK.

By _____

By _____

Title _____

Title _____

Appendix A: Managed Services Program

MANAGED SERVICES PROGRAM

The program offered in this proposal is designed to maintain system performance of the City & Borough of Skagway P25 public safety communication system at Skagway PD using the most economical means available in Alaska. It has a strong focus on readiness, combining preventive maintenance, end user training for first echelon on-site support by Skagway personnel, remote diagnostics and unlimited technical support, and dispatch for both emergency response and planned or deferred action for infrastructure and subscriber repair.

Some key capabilities and features of the proposed program are provided below.

1. PROGRAM PLANNING

1.1. PROGRAM PLANNING

Incident response readiness requires planning. Essential planning includes anticipation of the operational requirements for incident communication, creating a system design with the various features and capacities to facilitate those requirements, and ensuring the functional performance of the system over its life cycle. These are the foundations of the ProComm Alaska (PCA) plan.

Over time, of course, all of these factors change: operational requirements, the system's functional status, and system technologies – including manufacturer support of existing technologies. A good program regularly and methodically evaluates these foundational criteria and plans modifications and enhancements to incorporate the changes. Essential in a Department's planning, is a trusted partner who understands the capacity, use, and limitations of the current system and its on-site personnel, is technically competent to maintain each component of the system, and is constantly engaged in the development of the technologies available as a resource for effective communication and the trends within the industry and public safety interoperable communication planning nationally, regionally, and locally.

To maintain constant readiness a well planned maintenance program anticipates the requirements of routine use and major interoperable scenarios. It has planned and prepared an approach to maintenance and repair requirements that is relative to the particular resources (including local support personnel), location, components, and protocols/procedures of use that are anticipated.

It is essential to include in the context of system capacity planning, and to include in the plan the modification, enhancement, or upgrade of the system or subscribers as these components reach the end of their life cycle. Because technology capacity and manufacturer support are finite, PCA recommends a 5 years planning cycle that is reviewed annually. We

will provide Skagway access to PCA Engineering and subject matter experts. This assistance is best accomplished via planned teleconference events with stakeholders that review the results of the preventive maintenance and then, with that context in mind, review the overall plan to incorporate Department changes in communication objectives, local and national emergency response plans, changes or enhancements in technology, and other criteria. The emerging plan should result in action plans and budgetary recommendations with justifications.

1.2. PERIODIC INSPECTION AND PREVENTIVE MAINTENANCE (PMI)

To ensure the equipment operates optimally, thorough periodic inspections, cleaning, and calibration will be conducted and reported as planned. This proposal recommends and provides pricing for one comprehensive onsite inspection to include the following tasks.

1.2.1. INFRASTRUCTURE PMI

1.2.1.1. CALIBRATION TO MANUFACTURER'S SPECIFICATIONS. PCA will test and calibrate *analog* repeaters using 12db SINAD sensitivity test equipment and *digital* repeaters will be calibrated by testing bit error rate (BER).

1.2.1.2. ANTENNA LINE SWEEP. In addition to standard antenna testing, PCA includes an analytic report from electronic testing that evaluates the signal throughput and identifies any breaks or loss in the connectors, lines, or antenna. This is invaluable in determining the condition/health of the antenna system.

1.2.1.3. SUBSCRIBER PROGRAMMING EVALUATION. During PMI of all subscribers, the opportunity exists to make changes/improvements to programming. Prior to PMI therefore, a review of operational requirements and changes should occur in order to roll out any changes efficiently.

1.3. PMI REPORTS

Based upon the Department's specific equipment and readiness plan, reports will be created that communicate both technical performance results, lay-person summaries, and recommendations. It is essential that these reports effectively communicate:

- Infrastructure is reported by site, system, serial number and Tag ID (if applicable). Subscribers are reported by model, serial number, Tag ID, vehicle (if mobile), User (if portable). Other criteria may be added to support USCG-K asset management program.
- Reports the exact state of readiness of each component of the system,

- Provides essential maintenance requirements (those that must be done immediately to prevent eminent failure),
- Provides deferred maintenance recommendations (those that should be planned and executed in a future timeframe),
- Status of Manufacturers' support commitments,
- Subscriber Programming
- Maintenance Program issues and recommendations.

Appendix B: Subject Equipment

MOTOROLA MCC5500 RADIO CONSOLE

		MCC5500 EQUIPMENT
1	L3358	CONSOLE ELECTRONIC SHELF (CES) II
1	L3468	MCC SERIES I/O SHELF W/ CONTROLLER & CABLE
1	TT04532AA	ADD: MCC SERIES I / O MODULE II
1	L3359AC	MCC 5500 OP CAB II / PS CALIFORNIA COMPLIANT
1	TT04083AA	ADD: 100' CAB/CES CABLE
1	TT2833	COMPUTER, Z440 WORKSTATION WINDOWS 7 (NON RETURNABLE)
1	DSEV221	TECH GLOBAL EVOLUTION SERIES 22INCH WITH TOUCH
1	DDN2134	SOUND BLASTER AUDIGY FX PCIE SOUND CARD
1	CDN6673	CREATIVE LABS INSPIRE A60
1	DDN2089	DUAL IRR SW USB HASP WITH LICENSE (V47)
1	TT2483	IA TRANSPARENT CD - (USE WITH MCC 5500 WINDOW 7 & SERVER 2008 R2 OS)
1	CLN1856	2620-24 ETHERNET SWITCH
		CSDM EQUIPMENT
1	DDN6924	CSDM COMPUTER CABLE (DB09) 25 FEET
1	TT2483	IA TRANSPARENT CD - (USE WITH MCC 5500 WINDOW 7 & SERVER 2008 R2 OS)
1	TT2833	COMPUTER, Z440 WORKSTATION WINDOWS 7 (NON RETURNABLE)
		UPS FOR OP POSITION & BACK ROOM EQUIPMENT
1	DSGXTT09001038	UPS, GXT TOWER 1000VA/900W, 120V, 38 MIN RUNTIME SOFTWIRED
1	DSGXTR13501031	UPS, GXT RACKMOUNT 1500VA/1350W, 31 MIN RUNTIME, 120V
		SPARES
1	DDN8349AC	MCC5500 SPARES PACKAGE / CAB II PS CALIFORNIA COMPLIANT

MOTOROLA APX7500 RADIO CONSOLETTTE/CONTROL STATIONS

APX 7500 CONSOLETTTES (QTY 5)		
Digital Trunking With Encryption (QTY 2)		
2	L30KSS9PW1 N	APX7500 SINGLE BAND VHF MID PO
2	L30KSS9PW1 N	APX7500 SINGLE BAND VHF MID PO
Analog Conventional (QTY 1)		
1	L30KSS9PW1 N	APX7500 SINGLE BAND VHF MID PO

SPECTRACOM NETCLOCK PARTS LIST

1	9483	NETCLOCK/GPS TIME SERVER/MASTER CLOCK
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EVENTIDE NEXLOG 740 VOICE LOGGING RECORDER

QTY	NOMENCLATURE	DESCRIPTION
1	NEXLOG740	NEXLOG 740 BASE SYSTEM: 3U rack mount, Intel Core 2 Quad CPU, Dual NIC, Embedded Linux, NexLog Base software, web-based configuration manager and 1 st year warranty