

Professional Services Agreement No. 1065

By and between

Town of Bloomfield CT

And

Tusa Consulting Services II, LLC

For

Radio System Consultant

This Agreement is by and between the **Town of Bloomfield, CT** having its principal address at 800 Bloomfield Avenue, Bloomfield, Connecticut 06002 acting herein by Philip K. Schenck, Jr., Town Manager, duly authorized hereinafter referred to as "TOWN", and Tusa Consulting Services II, LLC, a limited liability company with its principal place of business at 75757 Highway 1082 Covington, LA 70435, acting herein by Dominic Tusa, It's Owner, duly authorized, hereinafter referred to as the "**Consultant**".

WITNESSTH THAT:

WHEREAS, TOWN published a Request for Proposal for the purpose of obtaining professional services for assessment of the current Police radio system and operations, develop a short and long term communications report and make recommendations relative to upgrades or replacement of existing communication systems; and

WHEREAS, CONSULTANT has been selected through a competitive process to provide such services; and

WHEREAS, TOWN and CONSULTANT desire to enter into an Agreement in accordance with the Request for Proposals which incorporates the scope, objectives, activities and budget and included herein (attached as Appendix A) and the CONSULTANT'S response (Appendix B);

NOW THEREFORE, TOWN and CONSULTANT do mutually covenant and agree as follows:

1. **TERM OF AGREEMENT**

The term of this Agreement shall be from the date of contract execution through the completion of the services described herein. It shall remain in force until terminated by either party in accordance with the terms and provisions of this Agreement as specified in Section 13 Termination of Agreement.

2. **SCOPE OF SERVICES**

The CONSULTANT agrees to provide prompt professional services to the TOWN. Specifically, the CONSULTANT is required to provide Phase I services as set forth

in Request For Proposals (Appendix A) and with the CONSULTANT'S Proposal dated June 17, 2016 (Appendix B) and are incorporated herein as if fully set forth.

Phase II services, if required, shall be initiated by the TOWN and shall be subject to mutual written consent between the TOWN and CONSULTANT. Such services shall be incorporated into this Agreement by written amendment in accordance with Section 14; Amendments, at the rates identified in Appendix B.

3. **COMPENSATION/FEE SCHEDULE**

3.1 **Lump Sum**

Compensation for Phase I of the project shall be \$28,000 plus expenses (estimated at \$2,500), based on the Fee Schedule by Phase in Appendix B. Should the Town elect to have an evaluation of signal strength readings, the Consultant will be compensated an additional \$4,200.

3.2 **Fee Schedule and Compensation**

The CONSULTANT shall submit billing invoices on a monthly basis for services performed during the previous month. Such invoices shall be accompanied by related materials and deliverables due to the TOWN. No advance payments will be made to the CONSULTANT.

The CONSULTANT agrees to meet with representatives of TOWN to discuss subject reports and billings as TOWN deems necessary, subject to the agreed-upon travel expense limitations. Approval and acceptance of said reports and billings by TOWN shall constitute an acceptance of the product by TOWN and shall be prerequisite to payment for the rendered services. Payment will be made within thirty (30) days of acceptance and approval

Payments to the CONSULTANT will be made conditioned upon the completion of all assignments in accordance with the terms and conditions of this Agreement. In the event, that TOWN reasonably determines the CONSULTANT to be in nonconformance with the terms of this Agreement or if in TOWN judgment the CONSULTANT's provision of services is not satisfactory, TOWN may take corrective action, including but not limited to the following:

- (a) Delay of payment, and or
- (b) Adjustment of payment, and/or
- (c) Suspension or termination of this Agreement

4. **MANAGEMENT**

This contract will be managed for TOWN by Paul B. Hammick, its Chief of Police.

The CONSULTANT's contact person shall be Jack Hart, who will be responsible for directing and coordinating the activities of the firm's personnel and subcontractors in all aspects of project(s) assigned.

5. **PERFORMANCE STANDARDS**

The CONSULTANT agrees that all of the services required of the CONSULTANT hereunder shall be performed in accordance with the terms and conditions of this Agreement with the highest degree of professional skill and competence.

6. **EVALUATION**

The CONSULTANT hereby agrees to participate fully with the guidance and assistance of TOWN in the implementation and maintenance of an evaluation system whereby the services provided under this Agreement may be continuously monitored. TOWN agrees to share such data and reports derived therefrom.

The CONSULTANT shall have an opportunity to review and comment on all drafts and final reports incorporating recommendations by TOWN regarding future directions or modifications of the Scope of Work. The CONSULTANT agrees to comply with the reasonable evaluation and information requirements issued by the TOWN.

The CONSULTANT shall comply with any and all reasonable recommendations of TOWN in regard to improvements and changes in services being performed which may result from evaluation, as they pertain to the provision of services as specified in the Scope of Work of this Agreement. The CONSULTANT shall correct any deficiencies identified by TOWN in a reasonable period of time to be determined by the TOWN.

Failure to comply with the recommendations of TOWN in the provision of services herein described may be considered a violation of this Agreement and sufficient reason for termination of same.

7. **ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION**

The CONSULTANT agrees to abide Executive Orders Number 3 and 17 of the State of Connecticut; and Presidential Executive Orders Number 11246, 11375 and 11063.

In carrying out this contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference.

The CONSULTANT shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training; including apprenticeship.

The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government,

setting forth the provisions of the non-discrimination clause. The CONSULTANT shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. The CONSULTANT shall incorporate, or cause to be incorporated, this provision in any and all subcontracts entered into pursuant to this Agreement.

8. **RELATIONSHIP BETWEEN PARTIES**

The CONSULTANT, and any approved subcontractors, are independent contractors and not an officer, employee or agent of the TOWN. Therefore, it is mutually agreed that this Agreement is a contract for services and not a contract of employment, and that, as such, the CONSULTANT and any and all subcontractors shall not be entitled to any employment benefits of TOWN such as, but not limited to: vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits.

All personnel matters affecting project team members will be the responsibility of the CONSULTANT, and TOWN shall be notified in writing of any changes to said team.

9. **INSURANCE**

The CONSULTANT shall be required to furnish a Certificate of Insurance evidencing the following insurance coverage prior to the execution of this Agreement. Failure to maintain insurance coverage as required and to name the Town of Bloomfield CT and the Bloomfield Board of Education as Additional Insureds (except on professional liability coverage) will be grounds for default of the terms and conditions of this Agreement. The CONSULTANT agrees that such default may be cured by procurement of insurance on behalf of CONSULTANT, at the CONSULTANT'S expense, at TOWN'S option. In addition:

- (a) *The insurance requirements shall apply to all subcontractors and/or Contractor s.*
- (b) *All policy forms shall be on the occurrence form. Exceptions must be authorized in writing by TOWN, unless the coverage is for Professional Liability where the form is to be claims made.*
- (c) *Acceptable evidence of coverage will be on the ACORD form or a form with the same format.*
- (d) *All renewal certificates shall be furnished at least 10 days prior to policy expiration.*
- (e) *Each certificate shall contain a 30 day notice of cancellation.*
- (f) *Insurance shall be issued by an insurance company licensed to conduct business in the State of Connecticut which has at least an "A-"VIII policy holders rating according to Best Publications latest edition Key Rating Guide.*

General Liability	Each Occurrence	\$1,000,000
	Products/Completed Operations Aggregate	\$2,000,000
	General Aggregate	\$2,000,000
Auto Liability	Combined Single Limit	\$1,000,000

Worker's Compensation	WC Statutory Limits	
Employer's Liability	EL each accident	\$100,000
	EL disease policy	\$500,000
	Disease accident limit	\$100,000
Umbrella	Per Occurrence, following form	\$1,000,000
Professional Liability	Per claim/aggregate	\$1,000,000

10. **HOLD HARMLESS AND INDEMNIFICATION**

The Consultant, its agents and assigns shall indemnify and hold harmless the Town of Bloomfield and the Bloomfield Board of Education, including but not limited to, its elected officials, its officers, and agents, ("the Town") from any and all claims made against the Town, including but not limited to, damages, awards, costs and reasonable attorneys fees, to the extent any such claim directly and proximately results from the reckless, wrongful, willful or negligent performance of services by the Consultant during the Consultant's performance of this Agreement or any other Agreements of the Consultant entered into by reason thereof. The Town agrees to give the Consultant prompt notice of any such claim and absent a conflict of interest, an opportunity to control the defense thereof.

11. **CONFLICT OF INTEREST**

TOWN and the CONSULTANT hereby covenant and agree that no member of the governing body of TOWN, or its designees or agents, and no other public official, either paid or unpaid, who exercises any functions or responsibilities with respect to this program during the individual's tenure or for one (1) year thereafter, shall have any personal or financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work and/or services to be performed in connection with the program assisted under this Agreement. The CONSULTANT shall cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the provisions of this paragraph.

12. **EVENTS OF DEFAULT AND REMEDIES**

12.1 **Events of Default**

Any of the following occurrences of acts shall constitute an Event of Default under this Agreement:

12.1.1 If default shall be made by the CONSULTANT, its subcontractors, successors or assigns, in the performance or observance of any of the covenants, conditions or agreements on the part of the CONSULTANT set forth in this Agreement; or

12.1.2 If any determination shall have been made by competent authority such as, but not limited to, any federal, state or local government official, or a certified public accountant, that the CONSULTANT's management or any accounting for its funding, from whatever source, is improper, inadequate or illegal; or

12.1.3 If a decree or order by a court having jurisdiction in the matter shall have been entered adjudging the CONSULTANT bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for the CONSULTANT under the federal bankruptcy laws, or any other similar applicable federal or state law; or

12.1.4 If any competent authority shall have determined that the CONSULTANT is in default of any federal, state or local tax obligation.

12.2 **Election of Remedies**

If any Event of Default hereunder shall have occurred and be continuing, for more than ten (10) days after notice by TOWN to CONSULTANT, the TOWN may elect to pursue any one or more of the following remedies, in any combination or sequence:

12.2.1 Take such action as it deems necessary, including, without limitation, the assessment of liquidated damages as described herein; and/or

12.2.2 Suspend the provision of services; and/or

12.2.3 Require the CONSULTANT to correct or cure such default to the satisfaction of the TOWN; and/or

12.2.4 Terminate this Agreement for cause in accordance with Section 13 hereof.

The selection of any remedy shall not prevent or stop TOWN from pursuing any other remedy and shall not constitute a waiver by TOWN of any other right or remedy.

13. **TERMINATION OF AGREEMENT**

13.1 **Termination**

"Termination", for purposes of this Agreement, shall mean the cessation, upon the effective date of termination, of the following obligations only: the CONSULTANT's obligation to perform the services described in the Scope of Services of this Agreement, and TOWN obligation, as described in Section 3 of this Agreement, to compensate the CONSULTANT for such services performed.

13.2 **Termination for Cause**

Upon the occurrence of any Event of Default, as set forth in Section 12 hereof, TOWN may terminate this Agreement by giving five (5) days written notice thereof to the CONSULTANT.

13.3 **Termination at Will**

TOWN may terminate this Agreement at any time, without cause, by giving thirty (30) days written notice thereof to the CONSULTANT.

13.4 **Reimbursement upon Termination**

In the event this Agreement is terminated by TOWN as herein provided, the CONSULTANT shall receive compensation for services performed prior to the effective date of termination, which conform to the Scope of Services and the Fee Schedule. However, if the CONSULTANT has damaged the TOWN, such payment may be withheld until TOWN determines whether or by how much such payment should be reduced.

14. **AMENDMENTS**

This Agreement may be amended by written instrument executed by the parties hereto, acting therein by their duly authorized representatives. The CONSULTANT's duly authorized representatives shall be Jack Hart, and TOWN's duly authorized representative shall be the Philip K. Schenck, Jr., Its Town Manager.

TOWN and the CONSULTANT may require changes in the Scope of Services to be performed hereunder. Such changes which are mutually agreed upon by and between TOWN and the CONSULTANT shall be incorporated in written amendments to this Agreement.

15. **SUBCONSULTANTS**

No portions of this work may be subcontracted, unless:

TOWN shall give prior approval to such subcontract in writing; and

Any such subcontract shall be approved as to form and legality by the TOWN's legal counsel; and

All of the terms, covenants, conditions and provisions of this Agreement shall have been incorporated in such subcontract and the subcontractor shall have agreed in writing to assume, perform and be bound by this Agreement and all the terms, covenants, conditions and provisions hereof, and shall have made the representation as to its expertise; and

TOWN shall not be liable for payment of any wages, materials, or other expenses of any subcontractors.

Subcontracting, either with or without the TOWN'S approval, shall not relieve the CONSULTANT of its obligations herein.

16. **DISCLAIMER OF AGENCY OR THIRD PARTY BENEFICIARY RIGHTS**

In no event shall anything in this Agreement be deemed to confer upon any person or entity agency status or third party beneficiary rights against the TOWN.

17. **REPORTS, INFORMATION AND MAINTENANCE OF RECORDS**

The CONSULTANT shall furnish TOWN with such information and reports concerning the progress and management of this Agreement as may be required from time to time. The form of said reports shall be determined by TOWN and consistent with TOWN requirements.

The CONSULTANT agrees that all records with respect to all matters covered by this Agreement shall be maintained and made available to the Town at no cost for a period of three (3) years after expiration or termination of this Contract or any renewal or extension thereof.

18. **AUDITS**

At any time during normal business hours, and as often as may be deemed necessary, the CONSULTANT shall make available to the TOWN, for examination, all records with respect to all matters covered by this Agreement.

19. **COPYRIGHT**

No reports or other documents produced in whole or in part under this Agreement shall be subject to an application for copyright by or on behalf of the CONSULTANT.

20. **ASSIGNABILITY**

The CONSULTANT shall not assign or transfer any interest in this Agreement without prior written consent of the TOWN.

21. **FINDINGS CONFIDENTIAL**

All of the information, reports, and documents prepared or assembled by the CONSULTANT, under this agreement, are the property of the TOWN. The CONSULTANT agrees that said documents shall not be made available to any individual or organization, other than authorized Federal and State officials, without prior written approval of the TOWN.

22. **SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

23. **CUMULATIVE REMEDIES**

All rights exercisable by and remedies of TOWN hereunder shall be cumulative and the exercise or beginning of the exercise by TOWN of any of its rights or remedies hereunder shall not preclude TOWN from exercising any other right or remedy granted hereunder or permitted by law.

24. **NOTICES**

All notices, approvals, demands, requests, or other documents required or permitted under this Agreement, other than routine communications necessary for the day-to-day operation of this project, shall be deemed properly given if hand delivered or sent by United States certified mail, postage prepaid, or by national overnight express delivery at the following address:

As to the TOWN:

**Philip K. Schenck, Jr.
Town Manager
Town of Bloomfield
800 Bloomfield Ave.
Bloomfield, CT 06002**

As to the CONSULTANT:

**Dominic Tusa
Tusa Consulting Services II, LLC
75757 Highway 1082
Covington, LA 70435**

Neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

25. **SUCCESSORS**

This Agreement, to the extent permitted herein, shall inure to the benefit of and be binding upon the parties hereto and any and all successors.

26. **NON-WAIVER**

Any failure by TOWN or CONSULTANT to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Agreement and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

27. **CONDITIONS**

The CONSULTANT agrees to conform to all applicable laws and ordinances and statutes of the Federal Government, State of Connecticut and Town, including but not limited to the following:

- 27.1 Civil Rights Act of 1964, as amended
- 27.2 Civil Rights Act of 1991, as amended
- 27.3 Executive Orders Numbers 3 & 17 of the State of Connecticut
- 27.4 Davis Bacon Act

- 27.5 Copeland "Anti-Kickback" Act
- 27.6 Hatch Act (Title 5 USC Chapter 15)
- 27.7 Section 504 of the Rehabilitation Act of 1973
- 27.8 Architectural Barriers Act of 1969
- 27.9 Fair Labor Standards

28. **AMERICANS WITH DISABILITIES ACT**

The CONSULTANT shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a the CONSULTANT, or be subjected to discrimination by the CONSULTANT. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the CONSULTANT.

Any television public service announcement that is produced or funded in whole or in part under this Contract shall include closed captioning of the verbal content of such announcement. The CONSULTANT shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

The CONSULTANT shall not permit coercion, intimidation, threatening, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

29. **TAXPAYER IDENTIFICATION NUMBER**

The Internal Revenue Service Form W-9, *Request for Taxpayer Identification Number and Certification* as submitted by the CONSULTANT to the TOWN, is hereby made a part of this Contract and is incorporated herein by reference. It is understood and agreed that TOWN shall use the number as listed on the IRS Form W-9 to report any and all compensation paid to the CONSULTANT under this agreement. It is further understood and agreed that TOWN shall not be liable for inaccurate information contained on said IRS Form W-9.

30. **GENDER/NUMBER/TITLE**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the Agreement requires otherwise. In the event of any discrepancy or conflict between the name and title of any person referred to in this Agreement, the title shall prevail.

31. **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and the Charter, ordinances, by-laws, policies and procedures of the Town. Subject to the provisions of Section 32, the parties agree that the venue for any legal proceeding with respect to this Agreement shall be Connecticut Superior Court, Judicial District of Hartford at Hartford.

32. **ARBITRATION**

Any controversy, dispute or claim arising out of or related to this Agreement or breach of this Agreement shall be settled solely by confidential binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association (AAA) in effect at the time the arbitration commences. The award of the arbitrator shall be final and binding. The prevailing party shall be entitled to recover, as part of its judgment, reasonable legal fees and costs from the other party. The arbitration shall be in Hartford County, Connecticut.

33. **ORDER OF CONSTRUCTION**

This Agreement includes several Appendices including the Request for Proposal (Appendix A) and Consultant's response dated June 16, 2016 (Appendix B), which are made a part hereof. In the event of a conflict between or among this Agreement and the Appendices, the provisions of this Agreement shall control, followed by Appendix A as the second priority, and Appendix B as the third priority.

34. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior understandings, negotiations, and agreements whether written or oral, between them respecting the written subject matter.

IN WITNESS THEREOF, TOWN and CONSULTANT have executed this Agreement on this 24th day of August 2016.

WITNESS

Nancy P. Naumes

TOWN OF BLOOMFIELD

By Philip K. Schenck, Jr.
Philip K. Schenck, Jr.
Town Manager

WITNESS

Meghan O. Bodair
Meghan O. Bodair

TUSA CONSULTING SERVICES II, LLC

By Dominic Tusa
Dominic Tusa
It's Owner, duly authorized