**GIRDWOOD POLICE SERVICES CONTRACT**

THIS AGREEMENT, is made and entered into this \_\_\_ day of September 2016, by and between the Municipality of Anchorage, a State of Alaska municipal corporation (“Anchorage”), on behalf of the Girdwood Valley Service Area (“GVSA”), and Whittier, Alaska, a municipal corporation (“Whittier” or “Contractor”).

WHEREAS, the GVSA wishes to procure police services furnished by the Whittier Police Department for a period of three (3) years;

NOW, THEREFORE, in consideration of the mutual promises herein, Anchorage and Whittier agree as follows:

This contract consists of:

A. Part I, consisting of 14 sections of Special Provisions;

B. Part II, consisting of 11 sections of General Provisions; and

# C. Appendix A – Scope of Services, consisting of 2 pages;

# D. Appendix B – Phone system for 911 calls, consisting of \_\_ pages.

**PART I**

**SPECIAL PROVISIONS**

Part I of this agreement consists of those provisions that are listed below by section number and title.

Section 1. Definitions

Section 2. Scope of Services

Section 3. Time for Performance

Section 4. Compensation; Method of Payment

Section 5. Termination of the Contractor’s Services

Section 6. Duties Upon Termination

Section 7. Insurance

Section 8. Assignments

Section 9. *Omitted.*

Section 10. Notices

Section 11. Contract Budget

Section 12. Force Majeure

Section 13. Financial Management System

Section 14. Funding Requirements

Section 15. Subcontracts

**Section 1. Definitions.**

A. “Administrator” means the Director of the Municipality of Anchorage Department of Public Works, or the Director’s designee.

B. “Anchorage” means the Municipality of Anchorage, including the GVSA as defined in subsection D of this section.

C. “Contractor” means Whittier.

D. “GVSA” means the area depicted in exhibit A.

**Section 2. Scope of Services.**

A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorpo­rated in this section by reference.

B. Anchorage shall not allow any claim for services other than those described in this section. However, the Contractor may provide, at its own expense, any other services that are consistent with this contract.

**Section 3. Time for Performance.**

A. This contract becomes effective when signed on behalf of Anchorage and Whittier.

1. The Contractor shall commence performance of the work described in Section 2 for a period of three (3) years, more specifically described in Appendix A to this contract.

**Section 4. Compensation; Method of Payment.**

A. Subject to the Contractor's satisfactory performance, Anchorage shall pay the Contractor FIFTY ONE THOUSAND FIVE HUNDRED DOLLARS ($51,500) monthly, not less than 25 days in advance of services rendered. For the avoidance of doubt, monthly payments made pursuant to this contract, subject to the Contractor’s satisfactory performance, shall annual total ONE HUNDRED FIFTY SIX HUNDRED THOUSAND EIGHTEEN DOLLARS ($618,000).

B. The Contractor is not entitled to any compensation under this contract, other than is expressly provided for in this section. Anchorage is not entitled to any services other than is expressly provided for in this section.

C. As a condition of payment, the Contractor shall have paid all municipal taxes currently due and owing by the Contractor.

**Section 5. Termination of the Contractor's Services.**

The Contractor's services under Part I, Section 2 may be terminated:

1. By mutual consent of the parties.

B. For cause by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor and the other party fails to cure the default within thirty (30) days after receiving the notice.

C. By Anchorage on not less than thirty (30) days notice, in the event:

i. that Contractor requires the assistance of the Alaska State Troopers’ Bureau of Investigation to adequately respond to major crimes including, but not limited to, homicide and sexual assaults; and

ii. Anchorage receives notice that the Alaska State Troopers’ Bureau of Investigation will not provide such assistance to Contractor without additional cost to Anchorage.

D. For no cause with eighteen (18) months notice to the other party prior to termination.

**Section 6. Duties Upon Termination.**

1. *Reserved.*
2. If the Contractor's services are terminated by mutual consent, for cause by Anchorage, or for no cause by Whittier, Anchorage shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Anchorage because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the monthly contract rate for such services rendered prior to termination. Any finished or unfinished documents or materials prepared by the Contractor under this contract shall become the property of Anchorage at its option and as permitted by law.

C. If the Contractor’s services are terminated for no cause by Anchorage, Anchorage will in addition to the reimbursement provided in paragraph 6B, reimburse Contractor for any unavoidable costs or fees incurred by Whittier subsequent to the termination arising from the upgrade to the Contractor’s phone system described in Appendix B. Anchorage will remit the reimbursement required by this subsection within thirty (30) days of receiving from Whittier notice to do so, together with supporting documentation; provided, Whittier shall in no event bill Anchorage for charges associated with services beyond Dec. 31, 2019, and Anchorage shall in no event be required under this subsection to pay more than [$ \_\_\_\_] in the aggregate.

D. If the Contractor receives payments exceeding the amount to which it is entitled under this section, it shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.

E. The Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the Administrator all documents, records, work product, materials and equipment owned by Anchorage and requested by the Administrator.

F. If the Contractor's services are terminated, for whatever reason, the Contractor shall not claim any compensation under this contract, other than that allowed under this contract or otherwise agreed upon in writing by both parties.

G. Except as provided in this section, termination of the Contractor's services under Part I, Section 5 does not affect any other right or obligation of a party under this contract.

**Section 7. Insurance.**

A. The Contractor shall maintain in good standing the insurance described in Subsection B of this section. Before rendering any services under the contract, the Contractor shall furnish the Administrator with proof of the insurance in accordance with subsection B in a form acceptable to the Risk Manager for Anchorage.

B. The Contractor shall provide the following insurance:

1. Workers’ compensation and employer’s liability coverage in the amount of $500,000 as required by Alaska law.

2. Commercial general liability, including contractual and personal injury coverage in the $5,000,000 per occurrence, $10,000,000 aggregate to include:

Premises Operations

Products and Completed Operations

Blanket Contractual

Broad Form Property Damage

Independent Contractors

Personal Injury

3. Commercial Automobile liability per occurrence in the amount of $1,000,000, single limit to include owned, hired and non-owned.

C. Each policy of insurance required by this section shall provide for no less than thirty days' advance notice to Anchorage prior to cancellation.

D. The Municipality of Anchorage, which includes the GSVA, must be listed as an additional insured on all policies, except Workers’ Compensation insurance.

E. General Liability and Automobile policies shall be endorsed to waive all rights of subrogation against the Municipality of Anchorage by reason of any payment made for claims under the above coverage.

**Section 8. Assignments.**

Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this contract shall give Anchorage the right immediately to terminate this contract without any liability for work performed.

**Section 9.** ***Omitted.***

**Section 10. Notices.**

Any notice required pertaining to the subject matter of this contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Anchorage: Municipality of Anchorage

c/o Maury F. Robinson

Department of Public Works

P.O. Box 196650

Anchorage, AK 99519‑6650

FAX: (907) 343-8088

Contractor: City of Whittier

c/o Chief Dave Schofield

P.O. Box 608

Whittier, AK 99693

FAX: (907) 472-2344

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

**Section 11. Force Majeure.**

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.

B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this contract, including without limitation:

1. Any interruption, suspension or interference result­ing solely from the act of the Municipality or neglect of the Municipality not otherwise governed by the terms of this contract.

2. Strikes or work stoppages.

3. Any interruption, suspension or interference with services caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

4. Order of court, administrative agencies or governmental officers other than those issued by Anchorage, GVSA, or Whittier.

**PART II**

**GENERAL CONTRACT PROVISIONS**

Part II of this agreement consists of those provisions that are listed below by section number and title.

Section 1. Relationship of Parties

Section 2. Nondiscrimination

Section 3. Permits, Laws and Taxes

Section 4. Nonwaiver

Section 5. Amendment

Section 6. Jurisdiction; Choice of Law

Section 7. Severability

Section 8. Integration

Section 9. Liability

Section 10. Inspection and Retention of Records

Section 11. Availability of Funds

**Section 1. Relationship of Parties.**

The Contractor shall perform its obligations hereunder as an independent contractor of Anchorage. Anchorage may administer the contract and monitor the Contractor's compliance with its obligations hereunder. Anchorage shall not supervise or direct the Contractor other than as provided in this contract.

**Section 2. Nondiscrimination.**

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non­discrimination clause.

B. The Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

C. The Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation.

D. The Contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this contract.

E. The Contractor shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination including, but not limited to Title 5 and Title 7, Chapter 7.50 of the Anchorage Municipal Code.

**Section 3. Permits, Laws and Taxes.**

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all applicable taxes from which it is not exempt pertaining to its performance under this contract.

**Section 4. Nonwaiver.**

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**Section 5. Amendment.**

A. This contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.

B. For the purposes of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Contractor:  **Mark Lynch**

**City Manager**

Anchorage: **Michael K. Abbott**

**Municipal Manager**

C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

**Section 6. Jurisdiction; Choice of Law.**

Any civil action rising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The law of the State of Alaska shall govern the rights and obligations of the parties under this con­tract.

**Section 7. Severability.**

Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

**Section 8. Integration.**

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

**Section 9. Liability.**

A. The Contractor shall indemnify, defend, save and hold Anchorage (or Municipality) harmless from any and all claims, lawsuits or liability, including attorney fees and costs, allegedly arising out of loss, damage or injury to persons or property or from any wrongful or negligent act, error or omission of Contractor, Contractor's agents, employees, subcontractors or invitees, occurring during the course of, or as a result of the Contractor’s, Contractor's agents, employees, contractors, subcontractors or invitees performance pursuant to this contract.

B. The Contractor shall indemnify, defend, save and hold Anchorage (or Municipality) harmless from any and all claims, lawsuits or liability, including attorney fees and costs, allegedly arising out of loss, damage or injury, not attributable to any wrongful or negligent act, error or omission of Anchorage, to: (i) a Whitter Police Officer performing services pursuant to this contract, or (ii) Whittier property used in the performance of services pursuant to this contract. For purposes of this provision, the phrase “wrongful or negligent act, error or omission of Anchorage” shall mean the independent and active negligence of Anchorage, and shall not include Anchorage’s selection, administration, or monitoring of Whittier’s performance under this contract, or in approving or accepting Whittier’s work. All liabilities for salaries, wages, any other compensation, injury or sickness, employment taxes, and employment claims arising out of or stemming from an Officer’s performance of services under this contract shall be the responsibility of the Contractor.

C. Nothing in this agreement is intended to abrogate or limit either parties’ ability to avail itself of any legal defenses it may have, including the doctrine of qualified immunity.

**Section 10. Inspection and Retention of Records.**

Every six (6) months from the effective date of this Contract, and upon request with reasonable notice, the Contractor shall submit such other information and reports relating to its activities under this contract, to Anchorage, in such form and at such times as Anchorage may reasonably require but may not require Contractor to create any forms, reports, or information compilations in order to meet Anchorage’s request. The Contractor shall permit Anchorage to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this contract to the extent permitted by law during regular business hours. Anchorage may, at its option, permit the Contractor to submit its records to Anchorage in lieu of the retention requirements of this section.

**Section 11. Availability of Funds.**

Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without penalty to Anchorage and Anchorage shall not be obligated to make payments under this contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

#### MUNICIPALITY OF ANCHORAGE CONTRACTOR

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Municipal Manager Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IRS Tax Identification No. \_\_\_\_\_\_\_\_\_

Tax Status: Taxable [ ] Non-Taxable [ ]

##### FUNDS AVAILABLE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

##### Chief Fiscal Officer

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX A**

*~Scope of Work~*

1. *Provisions of Officers; Term of Contract*. Whittier will make available to the GVSA no less than two (2) sworn police officers (“Officers”) October 1, 2016 from 7:00am to 11:59 pm on December 31, 2019.

Officers shall:

a. hold a valid police officer certificate from the Alaska Police Standards Council; or

b. meet the eligibility standards of 13 AAC 85.040(b)(1), (2), (4) and (5) and be actively working toward certification.

No Officer may be provided to the GVSA who has been denied certification, who has had his or her basic certification revoked, or who has surrendered his or her basic certificate, in this state or another jurisdiction, unless the denial or revocation has been rescinded by the Alaska Police Standards Council or by the responsible licensing agency of the certificate-issuing jurisdiction.

2. *Substance of Work*. Whittier will provide general law enforcement services to the GVSA, as follows:

a. Whittier, as it deems appropriate, will enforce State law within GVSA

b. Officers will respond to calls for service within GVSA

c. Officers will work with the State’s District Attorney’s Office and appear in Court, as needed to support legal proceedings

d. Officers will be under the exclusive supervision and control of Whittier

3. *Equipment*. Whittier, or its subcontractors, will supply all equipment necessary to fulfill the terms of this contract.

4. *Prisoner Transport; Charging.* Whittier will transport to the Anchorage Jail the following individuals, if any, arrested by Officers providing service under this contract:

a. All individuals arrested for felonies

b. All individuals arrested for crimes of domestic violence as defined in AS 18.66.990(3)

c. All individuals with outstanding warrants

d. All individuals arrested for misdemeanors for which the statewide bail schedule does not permit release on the individual’s own recognizance.

5. *Telecommunications*. Whittier shall:

a. Maintain radio systems and any needed Alaska Land Mobile Radio Communications System agreements to permit radio interoperability with the Alaska State Troopers and the Anchorage Police Department, and

b. Within 90 days of this contract’s effective date, and for so long thereafter as the contract has not been terminated, maintain a system for receiving 911 calls with at least the capabilities of the system described in appendix B.

6. *Public Safety Committee of Girdwood Board of Supervisors*. Whittier shall make a good faith effort to attend regularly scheduled meetings of the Public Safety Committee of the Girdwood Board of Supervisors. Anchorage anticipates that meetings of the Public Safety Committee will occur monthly, within the GVSA, after regularly scheduled business hours. Public Safety Committee meetings will provide a forum for communication between Whittier and the GVSA. The Public Safety Committee will exercise no control or direction over Whittier or any Officer; the Committee will meet for the purpose of receiving and exchanging information, and solely in advisory capacity.

7. *Description of Whittier’s Allocation of Amounts Paid*. Not later than 30 days after January 1, 2018, and annually thereafter, Whittier shall provide Anchorage with at least a high-level summary of how payments made to Whittier pursuant to this contract were allocated by Whittier. Said summary shall, at a minimum, disclose to Anchorage the total amount of money that Whittier spent for purposes of fulfilling this contract, for: (a) labor and benefits, (b) equipment, and (c) supplies.

8. *Emergencies.* Both parties agree that Whittier will not be deemed to have breached this contract if law enforcement services agreed upon in this contract are unavailable due to an unanticipated and ongoing emergency within the GVSA or Whittier that requires immediate police attention. The need for police services shall be determined within the sole, reasonable discretion of the Whittier Police Chief.

**APPENDIX B**

*~Phone System for 911 Calls~*

To provide services under this contract, Whittier will procure and maintain the following-described phone system:

[Insert description]

It is anticipated that, once procured, Whittier may incur ongoing maintenance or other fees associated with this system, in the approximate amount of [insert]. Whittier may bill Anchorage for these costs consistent with Part I, Section 6.B.i. of this contract, if, after termination of this Contract by Anchorage for no cause, they cannot be avoided.