

STAFF REPORT

TO: Mr. Chairman and Board of Supervisors
FROM: Shelly Holzerland, Communications Director
DATE: January 10, 2024
SUBJECT: Contract for Radio Administrator

Background:

In 2018, Dodge County embarked on a project to extend the public safety radio system across Dodge County.

The Dodge county system is a subnet of the Omaha Regional Interoperable Network (ORION), a 5-county/ OPPD, partnership. This radio system and the network that connects it is a highly sophisticated technological system that needs to be supported and maintained. Each county in ORION has personnel that oversee the operation and support of the system and the subscribers in their respective counties. They work together to keep the system running. These personnel are required to be highly familiar with their own subnets as well as the ORION system as a whole and the legacy radio systems they must support. The radio administrator must be able to have the security clearances and the ability to work with the other administrators in the region.

In November 2022, a contract was signed with PS Rad Com LLC to provide radio system administration for Dodge County. It was a one-year contract and expired in November 2023. PS Rad Com LLC requested some changes to the original contract and those requests were submitted to the PSAP Governance Board at the November 17, 2023, meeting. The changes are as follows:

1. The invoice time frame changed from monthly to quarterly.
2. The remittance time frame changed from 60 days to 45 days.
3. The notification of termination from either party was changed from 30 days to 90 days.
4. The term of the contract was changed from one year to be in effect until either party exercises the option to terminate.
5. Any changes to the compensation and payment must be approved by the Fremont/Dodge County Communications (PSAP) Board.

No change was made or requested to the compensation and payment at this time. The PSAP Governance Board unanimously voted to accept the changes.

Fiscal Impact: none

This project is part of the combined city/county PSAP.

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of January, 2024, by and between the City of Fremont, a Municipal Corporation (hereinafter referred to as the "City"), Dodge County Nebraska, a Municipal Corporation (herein after referred to as the "County"), own and operate a joint communications and dispatch center for 911 calls and it is referred to as the "Fremont/Dodge County Communications Center" (herein referred to as the "FDCC") and the independent contractor, P.S. Rad Com LLC (hereinafter referred to as "Rad Com").

WHEREAS, Rad Com has experience and expertise of FDCC radio matters that could be utilized by FDCC; and

WHEREAS, FDCC desires to hire Rad Com as the Radio Systems Administrator and to be available to perform certain professional services pertaining to radio communications for FDCC; and

WHEREAS, Rad Com represents that he is qualified and desires to perform such Work.

THEREFORE, FDCC and Rad Com, in consideration of the mutual covenants and agreement herein contained, do mutually agree as follows:

1. **SCOPE OF WORK.** During the term of this Agreement, Rad Com agrees to provide FDCC with a schedule it will work as well as be available for emergency calls. Rad Com will provide its own vehicle, insurance and not seek mileage reimbursement. Further, should Rad Com not be available for emergency calls, he will advise FDCC of the same by contacting the Communication Director. Rad Com will provide work and expertise as outlined in the document attached hereto as Exhibit "A", herein after referred to as "Work".

2. **OWNERSHIP OF WORK.** Rad Com expressly acknowledges that the Work and services provided hereunder, including but not limited to any material, designs, products, original works of authorship, creative works, discoveries, innovations, improvements, developments, and modifications, related to the Projects with FDCC is FDCC's property. The Work contributed by Rad Com hereunder shall be considered a "work made for hire" as defined by the copyright laws of the United States. FDCC shall be the sole and exclusive owner and copyright proprietor of all rights, title and interest in and to Rad Com's Work and services provided hereunder, in whatever stage of completion.

If for any reason the Work hereunder is determined at any time not to be a "work made for hire", Rad Com hereby expressly agrees to irrevocably transfer and assign to the City all rights, title and interest therein, including all copyrights and reproduction rights to any Work prepared by Rad Com in connection with and arising out of this Agreement, as well as all extensions thereto. Rad Com further agrees to cooperate with FDCC in securing and defending FDCC's rights, title, ownership, copyright and interest.

3. **TERM AND TERMINATION.** The term of this Agreement shall be effective on the 1st day of November, 2023, and shall continue thereafter in full force and effect until either parties exercise the option to terminate the Agreement. This Agreement may be terminated by (1) mutual, written agreement of all parties; (2) ninety (90) days written notice of either party, for any reason; or (3) ninety (90) days written notice of either party, in the event the other party fails or refuses to perform any of its duties and responsibilities under this Agreement; provided, however, that in the event the failure is remedied within forty-five (45) days after such notice is given, such notice shall be null and void and the Agreement shall continue in full force and effect.

4. **COMPENSATION AND PAYMENT.** FDCC agrees to pay Rad Com for full and completed performance of all Work under this Agreement at the rate of Seventy-Nine Thousand dollars (\$79,000) per year for the required 600 hours per year (with a goal of 50 hours per month) of work during regular business hours of Monday through Friday 7:00 a.m. to 5:00 p.m. FDCC agrees to pay One Hundred Sixty Dollars (\$160) per hour, with a minimum of two hours, for afterhours support. Rad Comm will carry over up to ten (10) hours of unused time each month. This time will be balanced out of every six (6) months. Rad Comm will bill out any hours over three hundred (300) (6 months x 50 hours per month.) The rate of one hundred fifty dollars (\$150) per hour will be used for hours overaged in the six (6) month/three hundred (300) hours that are balanced every six (6) months. Advice and simple instructions over the phone will be billed at seventy-five (\$75) per occurrence. This compensation may be reviewed by the parties yearly or upon request of a party or parties and it may be modified upon agreement of Rad Comm and approval of the FDCC Board. Request to review the compensation shall be done in writing with notice provided as set forth in this Agreement.

5. Rad Com will record its time and submit invoices and the end of each quarter for all work completed. The quarters are as follows: January through March, April through June, July through September and October through December. The invoices shall be sent to FDCC, attention Communications Director, at 725 N. Park Ave., Fremont, NE 68025. FDCC will remit payment to Rad Com within forty-five (45) days of receipt by FDCC. FDCC shall send payments to Rad Comm's mailing address as set forth below. Rad Com is responsible for information FDCC of any change of address.

6. **RESOURCES.** Rad Com shall supply its own vehicle, insurance and be responsible for his own mileage. Rad Com shall not have complete access to FDCC intranet or FDCC server, but Rad Com shall have access to any FDCC records, programs and information necessary to complete Work under this Agreement. FDCC's staff will be available for meetings with Rad Com, with reasonable advance notice, so as not to unreasonably interfere with or adversely affect the timeline for completion of Work under this Agreement.

7. **PROFESSIONAL RESPONSIBILITY.** Nothing in this statement shall be construed to interfere with or otherwise affect the rendering of services by Rad Com in accordance with his independent and professional judgment. Rad Com shall perform his services substantially in accordance with generally accepted practices and principles of his trade.

8. **CONFIDENTIALITY.** Rad Com acknowledges that he may be given or have access to Confidential Information, which is information or material proprietary to FDCC, including any information, data, know how, and other intellectual property, utilized by FDCC in its course of business. Rad Com agrees to keep, hold and maintain in trust all such Confidential Information and to neither directly nor indirectly disclose to any third party such Confidential Information without the prior written consent of FDCC. This obligation shall survive the termination of any agreement or relationship between the parties. At any time upon request in writing by FDCC, Rad Com shall immediately return or destroy such Confidential Information in his possession and control. Upon breach of any provision of this confidentiality agreement, FDCC shall be entitled to equitable and injunctive relief, recovery of any and all damages and any other remedies available under applicable law or in equity as determined by a court of competent jurisdiction.

9. **RELATION OF THE PARTIES.** Rad Com is retained by FDCC for the purposes and to the extent set forth in this Agreement and Rad Com's relationship to FDCC shall, during the term of this Agreement, be that of an independent contractor and shall not be considered as having an employee status. The City shall not withhold, from sums becoming payable to the Rad Com hereunder, any amounts for state or federal income tax, or for FICA (Social Security) taxes, during the term of this Agreement.

10. **ANTI-DELEGATION.** Rad Com shall not delegate any of its Work to third parties.

11. **NOTICES.** All notices or other communications required or permitted under this Agreement must be in writing and addressed as set forth below:

City of Fremont, Nebraska
Attn: City Administrator
400 E Military Ave
Fremont, NE 68025
(402) 727-2630

The County of Dodge, Nebraska
Attn: County Clerk
428 N Park Ave
Fremont, Ne 68025
(402)727-2767

Fremont/Dodge County Communications
Attn: Communications Director
725 N Park Ave
Fremont, NE 68025
(402) 727-2677

P.S. Rad Com LLC
Tom Christensen, President
P.O. Box 373
Arlington, NE 68002

12. **INDEMNIFICATION.** Rad Com agrees to accept and be responsible for its own acts or omissions, as well as the acts or omission of its employees, if any, in providing services under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for acts or omissions onto FDCC. Rad Com agrees to indemnify, defend and hold harmless FDCC, City of Fremont and The County of Dodge, Nebraska, their directors, officers, members, agents and employees from and against all claims, actions or causes of actions, including attorney fees, arising out of Rad Com's Work and services under this Agreement.

FDCC similarly agrees to accept and be responsible for its own acts or omissions, as well as the acts or omission of its employees, if any, in providing services under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for acts or omissions onto Rad Com. FDCC agrees to indemnify, defend and hold harmless Rad Com, its directors, officers, members, agents and employees, from and against all claims, actions or causes of actions, including attorney fees, arising out of FDCC's actions under this Agreement.

13. **GOVERNING LAW AND CONSTRUCTION.** This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of Nebraska. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties.

14. **OTHER TERMS.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns. This Agreement constitutes the complete understanding between the Parties, unless amended by a subsequent written agreement signed by the City, County, FDCC and Rad Com. Nothing in the Agreement shall be construed as prohibiting or limiting Rad Com from engaging in other employment, including providing similar services to third parties.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

AGREED AND ACCEPTED:

Executed and Adopted this _____ day of January, 2024, by the City of Fremont, Nebraska:

ATTEST:

THE CITY OF FREMONT,
NEBRASKA:

City Clerk

Mayor

Executed and Adopted this _____ day of _____, 2024, by the County of Dodge, Nebraska:

ATTEST:

THE COUNTY OF DODGE,
NEBRASKA:

County Clerk

Chairman

Acknowledged this _____ day of January, 2024, by the Fremont/Dodge County Communications Center

FREMONT/DODGE COUNTY
COMMUNICATIONS CENTER

Director

Acknowledged this _____ day of January 2024, by the P.S. Rad Com LLC

P.S. RAD COM LLC

Tom Christensen, President

E-VERIFY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of January, 2024, by and between the City of Fremont, a Municipal Corporation (hereinafter referred to as the “City”), Dodge County Nebraska, a Municipal Corporation (herein after referred to as the “County”), own and operate a joint communications and dispatch center for 911 calls and it is referred to as the “Fremont/Dodge County Communications Center” (herein referred to as the “FDCC”) and the independent contractor, P.S. Rad Comm LLC (hereinafter referred to as “Rad Com”).

FDCC and Rad Com hereby incorporate the following into each and every other agreement, whether oral or written, whether by work order, purchase order or otherwise, entered into between FDCC and Rad Com during any period during the term of this Agreement as if the following was part of each and every other agreement:

NEW EMPLOYEE WORK ELIGIBILITY STATUS

Rad Com is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If Rad Com is an individual or sole proprietorship, the following applies:

1. Rad Com must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us
2. If Rad Com indicates on such attestation form that he or she is a qualified alien, Rad Com agrees to provide the US Citizenship and Immigration Services documentation required to verify Rad Com’s lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. Rad Com understands and agrees that lawful presence in the United States is required and Rad Com may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

Executed and Adopted this _____ day of January, 2024, by the City of Fremont, Nebraska:

ATTEST:

THE CITY OF FREMONT,
NEBRASKA:

City Clerk

Mayor

Executed and Adopted this _____ day of January, 2024, by the County of Dodge, Nebraska:

ATTEST:

THE COUNTY OF DODGE,
NEBRASKA:

Count Clerk

Chairman

Acknowledged this _____ day of January, 2024, by the Fremont/Dodge County Communications Center

FREMONT/DODGE COUNTY
COMMUNICATIONS CENTER

Director

Acknowledged this _____ day of January, 2024, by P.S. Rad Com

P.S. RAD COM LLC

Tom Christensen, President