

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
INNOVATIVE RESCUE SYSTEMS LLC DBA AMKUS RESCUE SYSTEMS
Valparaiso, Indiana

This Contract is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, Innovative Rescue Systems LLC dba Amkus Rescue Systems, hereinafter referred to as the CONTRACTOR, having its principal place of business at 4201 Montdale Drive, Valparaiso, Indiana 46383.

ARTICLE 1: **SCOPE OF SERVICES**

The parties have entered into a Emergency Medical & Rescue Equipment Contract to become effective as of August 1, 2017, and to continue through July 31, 2019 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC. H-GAC enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as END USER, for the purchase of Emergency Medical & Rescue Equipment offered by the CONTRACTOR. The CONTRACTOR agrees to sell Emergency Medical & Rescue Equipment through the H-GAC Contract to END USERS.

ARTICLE 2: **THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:EE08-17, including any relevant suffixes
4. CONTRACTOR's Response to Bid No:EE08-17, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: **LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: **APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: **INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6: **END USER AGREEMENTS**

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement with the CONTRACTOR through this Contract and that the term of said Agreement may exceed the term of the H-GAC Contract. However this acknowledgement is not to be construed as H-GAC's endorsement or approval of the End User Agreement terms and conditions. CONTRACTOR agrees not to offer to, agree to or accept from END USER any terms or conditions that conflict with or contravene those in CONTRACTOR's H-GAC contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between CONTRACTOR and any END USER which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that CONTRACTOR will no longer be able to enter into any new End User Agreements with END USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.

ARTICLE 7:**SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

ARTICLE 8:**EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9:**REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10:**MOST FAVORED CUSTOMER CLAUSE**

If CONTRACTOR, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.
EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 11:**SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12:**DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

ARTICLE 13:**LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14:**LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 15:**TERMINATION FOR CAUSE**

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 16:**TERMINATION FOR CONVENIENCE**

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

ARTICLE 17:**CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18:**GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

ARTICLE 19:**PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

ARTICLE 20:

LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21:

PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

ARTICLE 22:

CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23:

LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD (IF APPLICABLE)

CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston
Area Council, Houston, Texas



Jack Steele, Executive Director

Attest for Houston-Galveston
Area Council, Houston, Texas



Deldre Vick, Director of Public Services

Date: 8-7, 2017

Signed for Innovative Rescue Systems LLC dba Amkus Rescue Systems
Valparaiso, Indiana



Printed Name & Title: Kyle Smith, President

Date: June 22, 2017

Attest for Innovative Rescue Systems LLC dba Amkus Rescue Systems
Valparaiso, Indiana



Printed Name & Title: Alice Huball Inside Sales Manager

Date: July 5, 2017

Attachment A
Innovative Rescue Systems LLC dba Amkus Rescue Systems
Emergency Medical & Rescue Equipment
Contract No.: EE08-17

Product Code	Mfg.	Model & Description	Base Offered Price
BBA	Amkus	AMK-24 (10,500 PSI), 24.0 Max. Spreader Opening, 23.9" Max. Spreader Force: 18785 lbs. Travel Distance	\$5,875.22
BBB	Amkus	AMK-30-CX (10,500 PSI), 16,950 lbs. Max. Spreading Force, 32" Spread Distance	\$4,895.25
BBC	Amkus	AMK-30-CRT (10,500 PSI) 17,775 lbs Max. Spreading Force, 32" Spread Distance	\$6,517.09
BBD	Amkus	Amkus ION iS240 Package, Includes 2 batteries and charger, 24" Spread, Max Spreader Force: 50,400 lbs	\$9,790.50
CBA	Amkus	AMK21A (curved blade, 10,500 PSI), Max Cutting Force 110,000 lbs. Max. Cutter Opening 5.2"	\$4,797.35
CBB	Amkus	AMK22 (curved blade, 10,500 PSI), Max Cutting Force 200,807 lbs. Max. Cutter Opening 5.0"	\$6,071.03
CBC	Amkus	AMK-25 Cutter (curved blade, 10,500 PSI), Max. Cutting Force 60,000 lbs. Max. Cutter Opening 4.1"	\$3,429.88
CBD	Amkus	AMK-25E Cutter (curved blade, 10,500 PSI), Max. Cutting Force 60,000 lbs. Max. Cutter Opening 7.0"	\$3,832.02
CBE	Amkus	AMKUS ION iC550 Cutter Package, Includes 2 batteries and charger, Max Cutting Force: 92,000 lbs., Max Cutter Opening: 5.9"	\$8,601.00
CBF	Amkus	AMKUS ION iC750 Cutter Package, Includes 2 batteries and charger, Max Cutting Force: 211,635 lbs. Max Cutter Opening: 7.2"	\$9,607.50
DBA	Amkus	AMK-C15 (10,500 PSI), 13,100 lbs. Spreading Force, 15.5" Spreading Distance, Cutting Force at Center of Blade 57,000 lbs.	\$5,071.39
DBB	Amkus	AMK-25C (10,500 PSI), 9,900 lbs. Spreading Force, 15.5" Spreading Distance, Cutting Force at Center of Blade 57,000 lbs.	\$4,116.13
DBC	Amkus	AMKUS ION iCT516 Combi Tool Package, Includes 2 batteries and charger, Max spreading force at tips: 12,441 lbs, Spreading Distance: 15.6", Max Cutting Force: 64,600 lbs.	\$8,967.00
EBA	Amkus	AMK-20R (push-pull), Push Force - 30,650 lbs., Pull Force - 14,400 lbs., Max. extended length - 21"	\$2,009.34
EBB	Amkus	AMK-30R (push-pull), Push Force - 30,650 lbs., Pull Force - 14,400 lbs., Max. extended length - 29.1"	\$2,107.25
EBC	Amkus	AMK-40R (push-pull), Push Force - 30,650 lbs., Pull Force - 14,400 lbs., Max. extended length - 40.0"	\$2,205.15
EBD	Amkus	AMK-60R (push-pull), Push Force - 30,650 lbs., Pull Force - 14,400 lbs., Max. extended length - 60.3"	\$2,400.96
EBE	Amkus	AMKUS ION iTR230 Telescopic Ram, Includes 2 batteries and charger, Max Push Force 48,061 lbs.,Max. extended length 22.6"	\$7,548.75
EBF	Amkus	AMKUS TR500 Telescopic Ram, Max Push Force 48,334 lbs.,Max. extended length 50"	\$4,750.00
FIA	AMKUS	AMK-FSWA16 - Full Set 16" Stroke Strut Package w/Accessories	\$6,299.78
FIB	AMKUS	AMK-FSWA12 - Full Set 12" Stroke Strut Package w/Accessories	\$6,299.78
FIC	AMKUS	AMK-FSWAMX - Full Set (1) 12" & (1) 16" Strut Package w/Accessories	\$6,299.78
FID	AMKUS	AMK-TASFW - Full Set TAS Strut Package w/Accessories	\$3,966.53
FIE	AMKUS	AMK-HLS164 - Full Set of (4) Hydraulic Lifting Struts 16" w/ Accessories	\$8,726.36
FIF	AMKUS	AMK-HLS124 - Full Set of (4) Hydraulic Lifting Struts 12" w/ Accessories	\$8,726.36
FIG	AMKUS	AMK-HLSMX4 - Full Set Hydraulic Lifting Struts (2) 12"/(2) 16"	\$8,726.36
FIH	AMKUS	AMK-HSWA16 - Half Set 16" Stroke Strut Package w/Accessories	\$3,164.07
FII	AMKUS	AMK-HSWA12 - Half Set 12" Stroke Strut Package w/Accessories	\$3,164.07

FIJ	AMKUS	AMK-TASHWA - Half Set TAS/TAS Strut Package w/ Accessories	\$2,029.93
FIK	AMKUS	AMK-HLS16P - Hydraulic Lifting Strut Pair 16" w/Accessories	\$4,381.94
FIL	AMKUS	AMK-HLS12P - Hydraulic Lifting Strut Pair 12" w/Accessories	\$4,381.94