



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** November 15, 2018

**Staff Contact:** Carol Akers and James Jacklett

**Agenda Title:** For Possible Action: To approve purchases through the Nevada Shared Radio System (NSRS) Purchase Agreements with Harris Corporation, through cooperative purchasing agreements with Washoe County and NDOT, for radio equipment including replacement radios, parts and accessories, for a total annual amount not to exceed \$500,000 to be funded from various City accounts (Carol Akers; cakers@carson.org and James Jacklett; jjacklett@carson.org)

**Staff Summary:** Washoe County and NDOT have executed contracts with Harris Corporation in association with the Nevada Shared Radio System P25 improvements. The new contracts provide for significant savings over previously approved joinder contract rates (72.2% discount vs 30% discount). Public works requests approval to purchase directly from Harris Corp. through joinders to these contracts in order to realize significant savings.

**Agenda Action:** Formal Action/Motion

**Time Requested:** 5 minutes

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## **Proposed Motion**

I move to approve purchases through the Nevada Shared Radio System (NSRS) Purchase Agreements with Harris Corporation, through cooperative purchasing agreements with Washoe County and NDOT, for radio equipment including replacement radios, parts and accessories.

## **Board's Strategic Goal**

Safety

## **Previous Action**

September 20<sup>th</sup>, 2018-The board approved the purchases of radio equipment through joinder contracts with Motorola Solutions and Dailey-Wells Communications Inc., for a total annual amount not to exceed \$500,000.00 to be funded from various city accounts.

Previous approved joinder contracts:

Motorola Solutions through NASPO ValuePoint Contract #06913; expires June 30, 2021

Dailey-Wells Communications Inc., through City of Los Angeles Contract #59606; expires October 31, 2019.

## **Background/Issues & Analysis**

The Nevada Shared Radio System through its members Washoe County, NDOT, and NV Energy has contracted Harris Corporation to build a new P25 Phase 2 radio system. The agencies each have an agreement with Harris Corporation for their portion of the radio system. The agencies were able to negotiate significant discounts that exceed those previously available to Carson City through joinder. These contracts offer the best available price for replacement radio equipment.

The contracts brought before the board for approval today are:

1) Harris Corporation through Washoe County; expires five years from the date of Final System Acceptance (agreement term anticipated through December 2028).

2) Harris Corporation through NDOT; expires five years from the date of Final System Acceptance (agreement term anticipated through December 2028).

**Applicable Statute, Code, Policy, Rule or Regulation**

NRS 332.195

**Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number: Multiple city-wide accounts that were approved in the FY19 budget.

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact: Approximately \$500,000.00 has already been approved for expenditure from various accounts from multiple City departments. This action will allow those funds to expended directly to Harris Corp. for significant savings.

**Alternatives**

Do not approve the joinder contract and provide alternative direction to staff.

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

## Radio Purchase Authorization Justification

Carson City has historically utilized Motorola Solutions radio equipment. In order to deliver reliable communications capability at the lowest possible cost the communications division now supports Harris Corporation and Motorola Solutions equipment. The communications division will continue to strive for the best value in Public Safety Communications without compromising the safety of our Residents, Visitors, First Responders, and Employees. The authorization of Joinder contracts for radio equipment delivers flexibility, efficiency, and savings while providing for the continued support of the existing infrastructure and subscriber equipment. The existing inventory contains approximately 900 subscriber radios (portable {handheld} and mobile {vehicle}) of which the vast majority are Motorola. Before FY18 radio replacement was the responsibility of the end-user department. The communications division was not funded for the replacement of subscriber radios. Recognizing that the radio inventory was comprised of a range of equipment at or approaching end of life, an annual 10% replacement target was adopted for subscriber radios to allow for a 10 year refresh rate.

FY19 Projects / Budget		
Subscriber Radio Replacement	560-3055-419.06-76 <sup>1</sup>	275,000
Infrastructure Radio Replacement/Improvement	560-3055-419-06-76 <sup>1</sup>	161,414
Miscellaneous Department Requests <sup>2</sup>		63,586
	<b>Total</b>	<b>500,000</b>

<sup>1</sup> Technical Equipment-FY19 Budget \$436,414

<sup>2</sup>Approximately \$63,586 will be used to cover anticipated end-user department requests in line with historical annual expenditures from the budgets of the requesting departments.

### Previous Board Actions:

20180920 BOS approved joinder contracts to Harris Corp and Motorola and authorized an amount not exceed \$500,000 through June 30, 2019

20180504 BOS approved a joinder to Harris Corp and Motorola and authorized an additional \$50,000 each through the remainder of the Fiscal Year.

20180405 BOS approved the purchase of 53 replacement radios for \$258,233.62 through NASPO joinder.

20170327 BOS approved a purchase through Joinder for \$65,897.33 including \$15,897.33 for seven replacement radios and an additional \$50,000 for end-user purchases through the remainder of the FY.

20160602 BOS approved purchase of 23 radios for\$58,956.15 through NASPO joinder.



# WASHOE COUNTY TECHNOLOGY SERVICES

1001 E. Ninth St  
RENO, NEVADA 89512  
(775) 328-2351

James Jacklett  
3505 Butti Way  
Carson City, NV 89701

Mr. Jacklett,

Carson City is authorized to purchase end-user radio equipment through the System Purchase Agreement between Harris Corporation and Washoe County dated 9/27/2018. Any purchase order (PO) referencing the agreement shall include the following text:

*The terms and conditions of this Purchase Order are governed by the System Purchase Agreement between Harris Corporation and Washoe County, dated 9/27/2018.*

Please also carbon copy (cc) Washoe County Technology Services, using the contact information below, on any POs referencing the System Purchase Agreement between Harris Corporation and Washoe County dated 9/27/2018.

Please direct any questions on this authorization to Quinn Korbolic – [qkorbolic@washoecounty.us](mailto:qkorbolic@washoecounty.us).

Carbon Copy Contact:

Sara Delozier  
[sdelozier@washoecounty.us](mailto:sdelozier@washoecounty.us)  
Washoe County Technology Services  
1001 E. Ninth St.  
Reno, NV 89512

Thank you,

Quinn Korbolic, IT Manager  
Washoe County, Technology Services



INTEGRITY



EFFECTIVE  
COMMUNICATION



QUALITY  
PUBLIC SERVICE

ADDRESS  
[WWW.WASHOECOUNTY.US](http://WWW.WASHOECOUNTY.US)



**SYSTEM PURCHASE AGREEMENT**

**BETWEEN**

**WASHOE COUNTY**

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**(Buyer)**

**and**

**HARRIS CORPORATION  
COMMUNICATION SYSTEMS SEGMENT  
(Seller)**

**DATE: Sept. 27, 2018**

# SYSTEM PURCHASE AGREEMENT

## TABLE OF CONTENTS

<u>SECTION</u>	<u>TITLE</u>
1.	DEFINITIONS
2.	SCOPE OF WORK
3.	PROJECT MANAGEMENT AND PLANNING
4.	OBLIGATIONS FOR SYSTEM IMPLEMENTATION
5.	DELIVERY, TITLE AND RISK OF LOSS
6.	PRICE
7.	TAXES
8.	CHANGES AND ADDITIONS
9.	PAYMENTS
10.	SUBCONTRACTING
11.	EXCUSABLE DELAYS
12.	SELLER'S INSURANCE AND PERFORMANCE BOND
13.	TESTING AND ACCEPTANCE
14.	SOFTWARE LICENSE
15.	COVERAGE
16.	WARRANTIES
17.	INTERFERENCE
18.	INDEMNIFICATION
19.	PATENTS
20.	LIMITATION OF LIABILITY
21.	REMEDIES
22.	CONFIDENTIALITY
23.	COMPLIANCE
24.	NOTICES
25.	ORDER OF PRECEDENCE
26.	TERM
27.	ENTIRE AGREEMENT
28.	AMENDMENT
29.	SEVERABILITY
30.	WAIVER
31.	HEADINGS
32.	GOVERNING LAW
33.	ASSIGNMENT; SUCCESSORS AND ASSIGNS

**EXHIBITS**

- A. STATEMENT OF WORK
- B. SOFTWARE LICENSE AGREEMENT
- C. FORM OF SURETY BOND FOR PERFORMANCE
- D. INDEMNIFICATION AND INSURANCE SPECIFICATIONS

## SYSTEM PURCHASE AGREEMENT

**THIS SYSTEM PURCHASE AGREEMENT** ("Agreement") is made and entered into this 27<sup>th</sup> day of Sept, 2018 ("Effective Date"), by and between WASHOE COUNTY, 1001 E. Ninth St. Reno Nevada, 89520, (hereinafter referred to as "Buyer") and Harris Corporation, a Delaware corporation, acting through its Communication Systems Segment (hereinafter referred to as "Seller") together the ("Parties").

### WITNESSETH:

**WHEREAS**, The State of Nevada, acting by and through its Department of Transportation, Washoe County, Nevada, a political subdivision of the State of Nevada, and Nevada Energy, ("NSRS Members") previously entered into that certain contract Nevada Shared Radio System Contract, dated as of May 9, 2017 (the "**Member Agreement**"), pursuant to which the NSRS members issued a Request for Proposal entitled "REVISED REQUEST FOR PROPOSAL, 697-16-016, Project Specifications and Instructions for Submitting a Proposal to furnish Nevada Shared Radio Replacement Project"(collectively, the "RFP") requesting proposals to provide NSRS Members with a radio communications System and services ("**Nevada Shared Radio System**"), as set forth in the RFP.

**WHEREAS** Buyer has selected Seller's Proposal and now desires to enter into this Agreement with Seller to provide Buyer with the radio communications and services that Buyer requires to support its obligations under the Member Agreement and as set forth in the Scope of Work attached to this Contract as an exhibit.

Nevada Shared Radio System, when fully implemented for each NSRS Member, will incorporate sub-systems for each NSRS Member, while together operating as an integrated statewide communication system providing communication for all NSRS Members. The Nevada Shared Radio System, as designed by Seller, will only operate as an integrated statewide communication system when all NSRS Members have contracted with Buyer to provide each NSRS Members' sub-system of the total system. The Nevada Shared Radio System will be implemented for all NSRS Members simultaneously on a regional basis as set forth in the Scope of Work attached to this Contract as an exhibit. ("**Shared Regional Implementation**").

**WHEREAS** Buyer and Seller desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

**NOW, THEREFORE**, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the Buyer and Seller as follows:

### SECTION 1. DEFINITIONS:

As used herein, the terms set forth below shall have meanings set forth below.

- A. "Acceptance" shall mean Acceptance of the System as set forth in the Testing and Acceptance section of this Agreement.
- B. "Acceptance Date" shall mean the date the System is accepted as set forth in the Testing and Acceptance section of this Agreement.



- C. "Acceptance Tests" shall mean the testing procedures attached to the Statement of Work and mutually agreed upon by Buyer and Seller to be performed to determine whether the System has met the Acceptance criteria either set forth in the Statement of Work attached to this Agreement as an exhibit or as mutually agreed upon in writing by Buyer and Seller.
- D. "Certificate of Insurance" shall mean the certificate to be provided by Seller evidencing the insurance coverage of Seller.
- E. "Change Order" shall mean a written modification to the Total Agreement Price, Project Schedule or other Agreement terms which is signed by both Parties.
- F. "Detailed Design Documents" shall mean those documents deliverable by Seller to Buyer at the conclusion of the Detailed Design Review described in the subsection Detailed Design Review under the Project Management Planning section of this agreement.
- G. "Detailed Design Review" or "DDR" shall have the meaning given in the subsection Detailed Design Review under the Project Management Planning section of this agreement.
- H. "Documentation Deliverables" shall mean the standard commercial quality manuals to be furnished by the Seller to the Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit and this Agreement.
- I. "Effective Date of the Agreement" shall be the date on which the Agreement is signed by the last of the parties to sign the Agreement. The "Effective Date" shall be the date inserted on the first page of the Agreement.
- J. "Expiration Date" shall mean the date on which the Term of this Agreement shall end which shall be the end of the Warranty Period (as defined in the Warranty Section) except that some other sections of this Agreement may have a later end date for that section of the Agreement as specifically provided in those sections of this Agreement.
- K. "Final System Acceptance" shall mean the Final Acceptance for the NSRS pursuant to section 13 paragraph E.
- L. "Hardware" shall mean, collectively, the Terminal Hardware and Infrastructure Hardware, as defined below.
- M. "Infrastructure Hardware" shall mean the equipment, goods, and materials to be supplied by Seller for the System infrastructure, as further described in the Statement of Work attached to this Agreement as an exhibit.
- N. "Project Kick-Off Meeting" shall have the meaning given in the Project Management and Planning section of this Agreement.
- O. "Project Manager" shall mean each respective Party's duly authorized representative designated to manage each Party's Project obligations.
- P. "Project Schedule" shall mean the schedule attached to the Statement of Work or otherwise mutually agreed upon by Seller and Buyer in writing for the delivery of the Hardware and Software and the performance of the Services described in the Statement of Work attached to this Agreement as an exhibit.

- Q.** “Project Sites” shall mean those sites where any construction work is performed or any Infrastructure Hardware is installed under the terms of this Agreement. The term “Project Sites” will include all of the Tower Sites (as defined below).
- R.** “Punch list” shall mean a list of non-service affecting defects in the appearance, operation or installation of the system infrastructure hardware, which the seller shall promptly resolve.
- S.** “Responsibility Matrix” shall mean the table included in the Statement of Work attached to this Agreement as an exhibit, which depicts the roles and responsibilities of Seller and Buyer set forth this Agreement.
- T.** “RFP” shall mean Buyer's request for proposal as described in the recitals of this Agreement.
- U.** “Services” or “Work” shall mean the services and work to be provided by Seller to Buyer included in the Statement of Work attached to this Agreement as an exhibit.
- V.** “Software” shall mean the proprietary computer software of Seller as owned exclusively by Seller or Seller's suppliers, as appropriate, and as further defined in and licensed to Buyer pursuant to the terms of the Software License Agreement.
- W.** “Software License Agreement” shall mean the System Software License Agreement set forth in an exhibit attached to this Agreement.
- X.** “Statement of Work” shall mean the description of the work to be performed by Seller to deliver the Hardware, install the System and provide the Services, all as described in an exhibit attached to this Agreement.
- Y.** “System” shall mean the radio communications System comprised of the Hardware and Software to be furnished by Seller to Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit.
- Z.** “Terminal Hardware” shall mean mobile units, portable units, control stations and related accessories to be provided by Seller as listed in the Statement of Work attached to this Agreement as an exhibit.
- AA.** “Subcontractor” shall mean a business or individual not employed by Seller and contracted with Seller to perform work on behalf of Seller.
- BB.** “Total Agreement Price” shall mean the price of the Hardware, the Software license and the Services to be furnished by Seller to Buyer pursuant to the terms set forth in the Statement of Work attached to this Agreement as an exhibit and this Agreement.
- CC.** “Tower Sites” shall mean those sites where equipment will be installed on existing or new towers as included in the Seller’s Proposal and to be finalized in the Detailed Design Documents or subsequent Change Orders.

## **SECTION 2. SCOPE OF WORK:**

- A. Seller shall furnish, deliver and install the Hardware and Software for the System and provide the Documentation Deliverables and Services in accordance with the terms of the Statement of Work, attached to this Agreement as an exhibit, the Project Schedule and this Agreement.
- B. The Detailed Design Documents, as described in the Project Management and Planning section of this Agreement and as amended by mutual agreement in writing by the Parties, shall be incorporated into this Agreement after the Detailed Design Documents are approved by the Buyer and thereafter shall supersede any contrary provisions in the Statement of Work attached to this Agreement as an exhibit.
- C. Seller shall commence, carry on and complete its obligations under this Agreement with all deliberate speed in accordance with the dates set forth in the Project Schedule and in a sound, economical and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, Seller agrees to cooperate with the various departments, agencies, employees and officers of Buyer.
- D. Seller agrees to secure at Seller's own expense all personnel necessary to carry out Seller's obligations under this Agreement. Such personnel shall not be deemed to be employees of Buyer nor shall they have or be deemed to have any direct contractual relationship with Buyer. Seller expressly understands and agrees that the Seller is and shall in all respects be considered an independent contractor.

## **SECTION 3. PROJECT MANAGEMENT AND PLANNING:**

- A. **Project Managers.** Seller shall designate a Project Manager who will lead the Seller' team for the System installation project and other Services and Work described in this Agreement (the "Project") and will serve as the Buyer's primary point-of-contact for Seller's project team and the official liaison between Seller's project team and Buyer. Buyer shall designate a Project Manager to function as the primary point-of-contact and official liaison between Seller's Project Manager and the Buyer.
- B. **Project Completion Dates.** The Project completion dates are described in the schedule included in the Statement of Work, entitled "Project Schedule." The Project Schedule may only be modified by mutual written approval of the Parties or as otherwise provided in this Agreement.
- C. **Project Kick-off Meeting.** Promptly after the Effective Date of the Agreement, the Seller's Project Manager shall schedule a Project Kick-Off Meeting, the timing and location of which will be mutually agreed upon by Seller and Buyer. The objectives of this meeting include introduction of all project participants, review of the roles of the project participants, review of the overall project scope and objectives, review of the resource and scheduling requirements and review of current site status.
- D. **Site Visits.** All existing towers, shelters and associated equipment provided by or mandated by Buyer shall be satisfactory in all manners to accommodate the System proposed by the Seller. Following the Effective Date of the Agreement, the Buyer shall provide Seller with access to all Project Sites upon reasonable notice to allow Seller and additional team members designated by the Buyer to thoroughly examine each Site and to perform the Detailed Design Review, to prepare a schedule of preparatory work required for each site and a timeline for completion of the preparatory work at each site.
- E. **Construction Management Services, Site Preparatory Work.** Seller shall perform the civil construction services set forth in the Statement of Work and the Responsibility Matrix including, but not limited to, the site improvement civil construction to be performed at the identified sites. After

execution of this Agreement, Seller shall identify and disclose to Buyer any and all problems or conditions at all Project Sites identified during the site visits of which Seller is aware that may affect the Work to be performed by Seller under this Agreement.

**F. Detailed Design Review.** The Detailed Design Review (“DDR”) phase will commence after the Effective Date of the Agreement, and conclude at a mutually acceptable time to maintain adherence to the Project Schedule. During the DDR, Seller’s Project Manager and project team will meet with Buyer’s project team on one or multiple occasions to review the System design, technical data, and site specific information to confirm and to refine the System and Tower Sites. At the conclusion of the DDR, Seller will provide Buyer with the following documents (the “Detailed Design Documents”) for review and approval by Buyer:

- Final Siting Plans
- Project Schedule
- Final pricing for site civil construction and microwave infrastructure
- Final pricing for Project Management services
- Engineered Site plans (sufficient for the Buyer to obtain required zoning approvals) and construction drawings for each site.
- Shelter Floor Plan Drawings
- Rack Elevation Drawings
- System Block and Level Diagrams
- Power and HVAC Loads
- Antenna Network Diagrams
- Site Frequency Plans (including spectrum analysis and intermodulation studies of existing and proposed frequencies at each site).
- TX Combiner Plan by Site
- Network Backhaul Plans
- Radio Frequency plans
- Cutover plan
- Staging Acceptance Test Plan (SATP)
- Coverage Acceptance Test Plan (CATP)
- Final Acceptance Test Plan (FATP)
- Equipment list
- Location of demarcation points for any items to be provided by the Buyer
- Site installation drawings, including room layouts, all cable runs, and grounding
- Antenna drawings including antenna placement on tower and coaxial cable loading information, antenna center line heights, and any other equipment mounted on the tower on a site by site basis
- Tower structural analysis results for towers passing analysis

- Structural analysis detailing required tower modifications for any towers that fail analysis
- Any other documents as mutually agreed upon by the parties.

Buyer shall have Twenty business (20) days to conduct its review of the above documents. Approval of Detailed Design Documents by the Buyer shall not be unreasonably withheld, conditioned or delayed.

- G. Project Schedule.** The Project Schedule for the Work is included in the Statement of Work, as an attachment entitled "Project Schedule." Updates to the start dates and durations will be made as the information evolves and will be mutually agreed upon by both parties or updated as otherwise provided herein.
- H. System Implementation Communications.** Seller and Buyer shall jointly establish a plan that defines regular meetings, reporting structure, and other communications activities, including working sessions that may be needed throughout the term of this Agreement to plan sub-tasks, including at a minimum: (a) one or more DDR meetings to communicate the final engineering design; (b) formal monthly reports to Buyer's Project Manager concerning work in progress and accomplishments; (c) weekly status meetings at which the parties' Project Managers and other project participants will provide updates; (d) conference calls with Seller's and Buyer's project teams to discuss tasks, assign responsibility, and establish schedules; and (e) workshops or working sessions that may be needed throughout the Project to plan subtasks.
- I. Buyer Approvals.** Buyer will acknowledge receipt of and review and respond with reasonable promptness to all submittals or other items requiring its approval under this Agreement. For all such submittals or other items Buyer will provide the Seller with either; (i) written notification of Buyer's approval, or (ii) a written notification of conditional approval subject to Seller providing prompt correction of any noted deficiency, or (iii) in the case of a submittal that does not meet the requirements of the Agreement, a written notification of Buyer's disapproval. Buyer's disapproval notification will be provided with reasonable detail to sufficiently advise Seller of the basis on which the submittal was determined to be unacceptable. Buyer agrees that, except as otherwise provided, failure to provide approval, conditional approval or non-approval of a submittal for which its approval is required within fifteen (15) business days of acknowledgement of receipt of the submittal from the Seller may result in a delay to the Project and that Seller may take any action allowed under this Agreement including but not limited to a Change Order as defined under this Agreement for such delays. Seller understands and agrees that Buyer is a political subdivision governed by a Board of Commissioners who may be required to approve certain submittals, and that the process for doing so may take several weeks or more. For all such submittals the Parties hereto agree Buyer shall use reasonable efforts to present any such submittals to the Board of Commissioners for their review and possible approval in such manner as to avoid delays to the Project. The parties agree that this section, Project Management and Planning, does not relate to the Testing and Acceptance procedures in the Testing and Acceptance section of this Agreement.

#### **SECTION 4. OBLIGATIONS FOR SYSTEM IMPLEMENTATION:**

The following subsections apply to the Work to be performed under the Agreement.

- A. Project Management and Implementation Plan.** Buyer and Seller each agree to perform their respective tasks and obligations pertaining to permits and licenses, Project Site surveys, general Project Site-related responsibilities, general Hardware-related responsibilities, and Project Site-specific

responsibilities as set forth in the Statement of Work. The Buyer's obligations set forth in the Statement of Work shall be performed by Buyer in a timely and proper fashion in accordance with the Project Schedule, or as otherwise agreed upon by Buyer and Seller, to allow Seller to timely perform its obligations under the Agreement.

- B. Access.** Buyer shall provide access, at no cost to Seller, to all owned, leased, or licensed Project Sites at reasonable times, and with an escort (if required) at no charge, upon reasonable prior notification from Seller. Buyer shall ensure sufficient room, within reason, for construction vehicles used by Seller. Seller shall identify any concerns with access to the Project Sites at the time of the DDR. After DDR any new concerns that were not present at the time of the DDR will be raised to the Buyer at the time any new concern is known. Buyer shall issue temporary identification cards to Seller's personnel and its authorized subcontractors, if required, for access to any of the Project Sites.
- C. Changes in Sites.** Any sites where Seller will operate and perform System installation under the terms of this Contract must be approved by Buyer, which approval shall not be unreasonably withheld, delayed or conditioned. Should Buyer direct an addition to, removal from, or modification of the list of sites as detailed in this Agreement that affects Seller's cost or schedule or System performance, including, but not limited to coverage, the parties agree that such change shall entitle Seller to a Change Order and each Party shall attempt, in good faith to fully negotiate and execute such Change Order prior to commencement of the Work at the changed site.
- D. Preparatory Work on Sites.** Notwithstanding anything to the contrary contained in this Agreement, the parties agree that some Project Sites may require tower replacement or modifications, as well as related permitting and licensing for Work and/or obtaining physical real estate space. As stated in the Responsibility Matrix, Buyer shall be responsible for securing all necessary site zoning, site access, or other permits (including but not limited to easements, impact studies, planning commission approval, variances, etc.) necessary for the Work, whether required by federal, state, or local authorities, with Seller assisting by providing information and any required civil engineering drawings. Buyer shall also have the responsibility to secure by lease, purchase, easement or otherwise all rights and access to selected sites or additional real estate as may be required. Buyer also shall be responsible for paying all utility charges to the appropriate utility for providing utility services to the System installation areas. The Parties agree to mitigate the need for tower replacement or modification to the extent practical. If any unanticipated tower replacements become necessary, Seller is entitled to an extension of time for any impacted activities and/or an equitable adjustment to the Contract Price to maintain the Project Schedule.
- E. Frequency FCC Licensing.** The Buyer will be responsible for obtaining all Federal Communications Commission frequency licenses for the System, with Seller providing technical assistance and information as set forth in the Statement of Work. Seller shall provide the Buyer with a recommended frequency plan for the system with sufficient time as agreed with the Buyer to process request to acquire or purchase and license any frequency needed with the appropriate authorities. Seller has no responsibility or obligation to secure licensed frequencies. In the event Buyer fails to obtain FCC licenses, and such failure has a material impact on the cost of Work performed by Seller under the Agreement and/or the schedule, the parties agree that Seller shall be entitled to an equitable adjustment to the Project Schedule, the Total Agreement Price, or both and that a Change Order shall be agreed to by the parties.
- F. Federal Aviation Administration (FAA) Approvals.** Buyer will be responsible for obtaining all FAA approvals for newly-constructed or modified towers with Seller providing technical assistance and information as set forth in the Statement of Work.

- G. Contractor Licenses.** Seller will be responsible for obtaining all contractor licenses required for the performance of its duties and obligations.
- H. Prevailing Wages.** Pursuant to NRS 338.020, every contract over \$250,000 (for Redevelopment Projects the contract amount is \$100,000) to which a public body is a party and that requires the employment of skilled or unskilled labor in the performance of a public work must contain in expressed terms the rate of wages to be paid to each of the classes of workmen. The rate of wages must not be less than the rate of such wages then prevailing in the county in which the public work is located. Unlike prevailing wage requirements under Federal law (Davis-Bacon) and requirements in many states that surround Nevada, Nevada's prevailing wage requirements may be met by providing a combination of wages and permissible benefits to the mechanic or workman. Prevailing wage rates and amendments are posted on the Labor Commissioner's website [www.labor.nv.gov](http://www.labor.nv.gov)
- I. Vietnam Veterans.** The SELLER agrees to comply with Section 402-Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era Act.
- J. Equal Employment Opportunity.** The SELLER will not discriminate against any employee or applicant for employment or individual receiving the benefit of SELLER services because of race, creed, religion, color, age, national origin, political affiliation, sex, sexual orientation, familial status, or disability (as provided in Section 504 of the Rehabilitation Act of 1973, as amended). SELLER will take action to ensure that all applicants are considered equally. 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 SELLER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Such action shall include individuals benefiting from program services/activities.
- K. Americans with Disabilities Act.** The SELLER agrees to comply with any federal regulations issued pursuant to the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended.
- L. Hatch Act.** Neither SELLER program nor the funds provided therefore, nor the personnel employed in the administration of the program shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.
- M. Byrd Anti-Lobbying Amendment.** The SELLER agrees to conform to the regarding Influence/Lobbying Requirements as set forth in the Byrd Anti-Lobbying Amendment 31 U.S.C. 1352.
- N. Clean Air Act.** The SELLER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act 42 U.S.C. 7401-7671 q and the federal Water Pollution Control Act as amended 33 U.S.C. 1251-1387.
- O. Drug-Free Workplace Requirements.** SELLER agrees to conform to the guidelines set forth in the certification regarding Drug-Free Workplace Requirements. SELLER certifies that it will provide a drug-free workplace by:
- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - b) Establishing a drug-free awareness program to inform employees about:
    1. The dangers of drug abuse in the workplace;
    2. The grantee's policy of maintaining a drug-free workplace;
    3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);
- d) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
  - 1. Abide by the terms of the statement; and
  - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- e) Notifying the agency within ten days after receiving notice under subparagraph (4) (b) from an employee or otherwise receiving actual notice of such convictions;
- f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (4) (b), with respect to any employee who is so convicted;
  - 1. Taking appropriate personnel action against such employee, up to and including termination; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**P. Debarment, Suspension and Other Responsibility Matters.** SELLER certifies to the best of its knowledge and belief that it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not, within a three year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission or any other offenses enumerated in (b) above;
- 4. Have not, within a three-year period preceding this Agreement, had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- 5. Understands that a false statement on this certification may be grounds for rejection or termination of this Agreement. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

**SECTION 5. DELIVERY, TITLE AND RISK OF LOSS:**

- A. **Infrastructure Hardware.** Seller shall ship the Infrastructure Hardware at Buyer's expense on or before the dates set forth in the Project Schedule. Buyer shall approve shipment to Buyer's secured facility before Seller ships. Seller will give Buyer three (3) business days-notice before shipment. Partial deliveries shall be permitted. Upon receipt of the equipment by the Buyer, title to each portion of the Hardware and all risk of loss or damage shall pass to Buyer. Infrastructure Hardware may be shipped directly to Buyer or to a mutually agreed upon staging or storage location. Upon transfer of title from Seller to Buyer, Buyer shall keep the Hardware fully insured.
- B. **Terminal Hardware.** Seller shall ship the Terminal Hardware to Buyer at Buyer's expense. Seller shall only ship Terminal Hardware to Buyer at Buyer's request. Seller will give Buyer three (3)



business days-notice before shipment. Partial deliveries shall be permitted. Upon receipt of the Terminal Hardware by the Buyer, title to each portion of the Hardware and all risk of loss or damage shall pass to Buyer.

- C. Regardless of whether title has passed to Buyer, Seller is responsible for any damage to any Infrastructure or Terminal Hardware which is caused by any employee, agent, subcontractor, or other person or entity employed by Seller during installation and testing of such Hardware, from the time Seller takes physical control of the Hardware to final acceptance of System by Buyer.

**SECTION 6. PRICE:**

- A. The Total Agreement Price is the sum of the Infrastructure Hardware Price (Section 6.A.1), additional funds established for but not limited to Project Site Civil Infrastructure and Microwave Infrastructure (Section 6.A.2), and the total price of all Terminal Hardware (Section 6.A.3). The individual prices for the units of Hardware, the Software license and the Services to be performed are as set forth in the Price Schedule as an attachment to the Statement of Work. Buyer and Seller recognize that the pricing under his Agreement is dependent upon a volume discount based on the amount of Terminal and Infrastructure Hardware purchased by Buyer. In the event that the Buyer does not purchase the total Terminal and Infrastructure Hardware under this Agreement as represented in Exhibit 5 Equipment List and Exhibit 6 Price Schedule, Buyer agrees Seller shall be entitled to an equitable adjustment by Change Order to the Total Agreement Price in accordance with the following table:

Radio Quantity	Reduction of Add'l Discount/Price Increase
4,000 +	\$0
3,000 – 3,999	\$210,000
2,000 – 2,999	\$525,000
1,000 – 1,999	\$850,000
No Radios	\$3,500,000

- B. The Total Agreement Price to be paid by Buyer to Seller is Nineteen million, five hundred four thousand, two hundred eighty-seven and 28/100 United States Dollars (\$19,504,287.28). The individual prices for the units of Hardware, the Software license and the Services to be performed are as set forth in the Price Schedule as an attachment to the Statement of Work. Payments for the Infrastructure Hardware Price are addressed in Section 9.A.1.

- 1. The mutually agreed upon Seller radio system equipment pricing amounts have been priced on a commercial, firm-fixed price basis and are set forth in the table below and in the Total NSRS Price Summary, Table B.1 in Exhibit 6 to the Statement of Work. The total amount of the following categories of Seller radio system equipment listed in the table below (\$8,543,699.93) will be billed in accordance with the contract milestone payments listed in Section 9 PAYMENTS, Subsection 4. The pricing amounts do not include any sales and use taxes. Applicable sales and use taxes, if any, will be included on invoices and payable by buyer.

<b><u>Radio System Equipment Pricing Amounts</u></b>	
Washoe Discount Base Price	\$4,577,482.72
Washoe County Greenfield Sites Price	2,675,477.68
Washoe County Dispatch Equipment and Services	583,647.53

Washoe Extended Warranty Support	707,092.00
<b>Total</b>	<b>\$8,543,699.93</b>

2. Due to the scope and nature of the Agreement, additional funds have been established to address Seller services, including but not limited to Project Site Civil Infrastructure and Microwave Infrastructure, that may be required to complete the project scope of work. The scope of services requiring the use of these additional funds will be agreed upon in writing by the Parties in a Change Order to this Agreement prior to the commencement of such services. The cost of services will also be negotiated prior to performing the services and will include all costs associated with the work. The total costs of the work for the additional funds for this Agreement shall not exceed the of Seven million, thirty-three thousand, two hundred twenty-three and 40/100 Dollars (\$7,033,223.40) unless such sum is increased through a written amendment to this Agreement. Services to be performed by the Seller shall not commence until its receipt of written approval from the Buyer.
3. Pricing for Terminal Hardware is specified on a per unit basis in Exhibit 6. Payments for Terminal Hardware equipment are addressed in Section 9.A.3.
4. The Seller’s mark up on subcontractor performed work shall not be more than twenty-five percent (25%) of the total of the attached subcontractor invoice amounts for material and thirty-two (32%) of the total of the attached subcontractor invoice amounts for services. The definition of “third party materials” does not include any vendor materials listed in the Harris Price Catalog pages (“Vendor Materials”). Any Vendor Materials sold by Seller to Buyer which are not otherwise listed with a unit price in the pricing schedule pages in this Agreement, will be sold at the price listed in the Harris Price Catalog less a Twenty-Six Percent (26%) discount. Seller will provide a copy of the applicable Harris Price Catalog page as substantiation for the price of any Vendor Materials.
5. Terminal Hardware Pricing after extended warranty period:

<b>Terminal Hardware Pricing Discount Post Warranty</b>	
<b>Discount per PO Quantity</b>	
<b>Tier Quantity</b>	<b>Discount off List</b>
4,000+	70%
3,000-3,999	65%
2,000-2,999	60%
1,000-1,999	55%
1-999	48%

**SECTION 7. TAXES:**

In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or any Products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall otherwise furnish Seller with tax exemption certificates acceptable to all applicable taxing authorities.

**SECTION 8. CHANGES AND ADDITIONS:**

- A. **Hardware Changes.** In the event of any change in the Hardware as a result of the imposition after the Effective Date of this Agreement of any requirements by any federal, state, or local government, Seller

shall be entitled to an equitable adjustment, by Change Order, in the Total Agreement Price, the Project Schedule, or both. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Buyer and Seller. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by the parties hereto.

- B. **Buyer Requested Changes.** Buyer may request changes in or additions to the Work or in the time or place of performance of the Work under this Agreement. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Agreement, Buyer or Seller, as applicable, shall be entitled to an equitable adjustment, by Change Order, in the Total Agreement Price, the Project Schedule, or both. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Buyer and Seller. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by the parties hereto.
- C. **Buyer Delays In Performance.** To the extent that Buyer fails to timely perform its obligations under the Responsibility Matrix or otherwise under this Agreement, and such failure has a material impact on the cost of Work performed by Seller under the Agreement and/or the schedule, the parties agree that Seller shall be entitled to an equitable adjustment to the Project Schedule, the Total Agreement Price, or both. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Buyer and Seller. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by the parties hereto.
- D. **Concealed Conditions.** If, following Buyer's Acceptance of the Detailed Design Documents, Seller encounters a concealed condition, of which it had no reason to be aware, at one or more Project Sites, then the Parties agree to work together to determine the best course of action and agree to negotiate in good faith a Change Order and an equitable adjustment to the Project Schedule and/or Total Agreement Price. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Buyer and Seller. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by the parties hereto.
- E. **Product Discontinuance.** Subject to its obligation to fulfill its obligations set forth in the Agreement, Seller reserves the right to change or to discontinue any product covered by the Agreement provided that Seller agrees to make available to the Buyer a functionally equivalent replacement product equal to or better than the product discontinued.
- F. **Frequency Support and Frequency Changes.** Seller shall reasonably support Buyer in submitting the Buyer's frequency licensing applications to the Regional authorities and the Federal Communications Commission for this project. In the event that, after all commercially reasonable efforts and due diligence have been expended, the Buyer cannot obtain all of the necessary United States and Canada government approvals for the frequency plan as described in this Statement of Work and this Agreement, it shall be treated as an excusable delay event pursuant to the Excusable Delays section of this agreement for which an extension to the Project Schedule shall be granted, and Seller will diligently and expeditiously prepare and provide to Buyer a System re-design for its review and approval including all price and schedule changes. Notwithstanding anything to the contrary contained in the Agreement, the Parties agree if a System re-design has a material impact on the cost of Work performed by Seller under the Agreement and/or the schedule, the parties agree that that Seller may be entitled to an equitable adjustment to the Total Agreement Price and/or the Project Schedule for Seller's services on any such System re-design. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to Buyer and Seller. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by

the parties hereto. In the event that Buyer and Seller cannot mutually agree on the System re-design, either party may then terminate the Agreement on thirty (30) days written notice to the other Party.

## **SECTION 9. PAYMENTS:**

- A. The Total Agreement Price for the Hardware, the Software license and the Services shall be paid by the Buyer to Seller following the pricing schedules below (Section 9, A.1 – A.3). The Seller shall submit a signed invoice in accordance with the pricing schedule for all services rendered along with one copy of documentation validating that work associated with the invoice has been completed. Invoices must be submitted on the Seller's stationary or on the Buyer's standard invoice form.
1. **Infrastructure Hardware.** Costs for Infrastructure Hardware are to be paid for by Buyer upon completion of the milestones specified in the project schedule, Exhibit 4, and as hereto specified.
    - i. Six and a one quarter percent (6.25%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price shall be due at the time of the signing of the Agreement by the Buyer and Seller.
    - ii. Twelve (12%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due at the time of signed approval of the final Detailed Design Review.
    - iii. Ten percent (10%) of the Infrastructure Hardware Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due at the time that the full Network Switching Center (NSC) Installation is commences.
    - iv. Fifteen percent (15%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due at the time that the full Network Switching Center (NSC) Installation is complete.
    - v. Fifteen percent (15%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due at the time of approval of Region two (2) Infrastructure Hardware factory staging as described in the project schedule.
    - vi. Twenty percent (20%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due at the time of Region two (2) Infrastructure Hardware shipment and delivery to Buyer. Partial payments of the total Infrastructure Hardware amount due under this subparagraph shall be allowed and shall be calculated using the value of the Infrastructure Hardware shipped and delivered as a percentage of the total value of the Infrastructure Hardware to be shipped and delivered under the terms of this Agreement. The Buyer shall have the right to inspect and confirm that the Infrastructure Hardware included in Seller's invoice has been delivered to Buyer
    - vii. Fifteen percent (15%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) shall be due upon completion and Buyer approval of the Buyer portion of Region Two (2) Hardware installation (exclusive of the mutually agreed upon value of any punch list items).
    - viii. Six and three quarters percent (6.75%) of the Total Agreement Price (excluding the aggregate price of the Terminal Hardware included in the Total Agreement Price) plus any remaining unpaid portion of the Total Agreement Price for all Hardware, Software and Services to be provided under the terms of this Agreement (excluding the aggregate

price of the Terminal Hardware included in the Total Agreement Price) shall be due upon Final System Acceptance (including resolution of all punch list items).

**2. Site Civil Construction and Microwave Infrastructure Hardware and Services**

Payment in full at shipment of equipment and payment monthly on services, shall be due for civils related work.

1. Seller shall submit signed invoices for Site Civil and Microwave Infrastructure hardware and services based on pricing specified in the Final Detailed Design. Invoices Shall be submitted when Site Civil or Microwave Infrastructure at one or more sites is complete.
2. Invoices submitted for Site Civil and Microwave Infrastructure hardware and services shall be accompanied by substantial documentation indicating work has been completed.
  - a. If Seller’s subcontractor performed work, subcontractor’s invoice to Seller shall be included as part of invoice documentation.
3. At completion of 100% of the site civil construction and microwave equipment, software, and licensing installation, including all punch list items, 100% of the cost detailed in the Final Detailed Design for site civil construction and microwave equipment, software, and licensing shall be paid by Buyer to Seller.

**3. Terminal Hardware:**

One Hundred Percent (100%) of the purchase price of Terminal Hardware shall be invoiced upon Buyer’s approval of shipment of units on a per unit basis.

**4. Radio System Equipment Milestone Payments**

Milestone Payment	%	Milestone Payment Amount
1. Contract Mobilization due at Contract Signing	6.25%	\$533,981.25
2. Customer Approval of Detailed Design Review	12%	\$1,025,244.00
3. Installation of NSC Initiated	10%	\$854,370.00
3. Installation of the NSC Complete	15%	\$1,281,555.00
4. Factory Staging approved	15%	\$1,281,555.00
5. Equipment Shipment	20%	\$1,708,740.00
6. Approval of Equipment Installation	15%	\$1,281,555.00
7. Final System Acceptance	6.75%	\$576,699.68
<b>Service Provider Radio System Equipment Billing Total</b>	<b>100%</b>	<b>\$8,543, 699.93</b>
Civils by Site		\$7,033,223.40
<b><u>Terminal Hardware Payments:</u></b>		
Washoe Subscriber Equipment (Terminals) and Programming Services amounts will be invoiced upon shipment of the Terminal units on a		

per unit basis at the unit prices set forth in the pricing pages less the Radio Volume Discount percentage listed in Table B.1, Price Summary. Shipment schedule will be determined by customer.		
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- B. Buyer reserves the right to inspect and approve all work or deliverables performed by Seller under this Agreement before payment is made to the Seller. Payment will be withheld if Buyer determines any work or deliverables to be unsatisfactory in that they have not been provided in a workmanlike manner consistent with standards in the trade, profession, or industry. Payment shall remain unpaid until the professional services are completed in accordance with the standards and work requirements defined in this Agreement. In such an event, Buyer will provide the Seller with a written explanation as to why payment has been withheld.
- C. **Payment of invoices**
  1. The Seller shall be paid within thirty (30) calendar days of a received invoice which is complete, correct and undisputed by Buyer.
  2. Buyer shall have twenty (20) calendar days after receipt of an invoice to dispute any or all of the charges on that invoice. The undisputed amount shall be paid to the Seller within thirty (30) calendar days of receipt of an invoice. The disputed amount shall be negotiated and resolved in good faith by both Parties and paid within thirty ((30) calendar days after the date the corrected invoice is received by Buyer or is approved by both Parties for payment.
- D. **Other Amounts** Any other amounts due Seller hereunder shall be due sixty (60) days following Buyer's stamped received date of Seller's proper invoice.

**SECTION 10. SUBCONTRACTING:**

Seller may subcontract any portion of Work to be performed by Seller hereunder and shall obtain prior approval and consent of Buyer, provided that Seller shall be responsible for the performance and Work of any such subcontractors.

Seller understands and agrees that Buyer is subject to an Interlocal Agreement which describes the operations of its portion of the radio system among the parties to that Interlocal Agreement. To build and implement the System as described herein Seller will require access to the Interlocal members' properties which include secure facilities such as police stations and jails. Seller is aware and agrees that those members have the right to require independent background checks performed by another entity. Buyer will use its best efforts in advance of any such need to obtain agreement from the members to accept the background checks performed by Seller and Seller will provide Buyer with the information requested by members to obtain that agreement. The Parties will work together to avoid delays and any impact on the critical path.

**Background Checks**

Access to Buyer controlled areas is granted on an as-needed basis only in accordance with Seller's internal badge and access policies. Buyer shall specify in the Release or Scope of Work whether or not the Work under this Contract requires either: (i) unescorted physical access to Buyer's Facilities;

or (ii) local or remote access to Buyer's Cyber Assets. For all Personnel who require either such access, Seller shall:

- a. Conduct, at Seller's cost and expense, a Personnel risk assessment to include at a minimum an identity verification and seven (7) year criminal background check for the current residence and past locations of residence of all Personnel requiring access. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Seller signed a Seller/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Buyer. In the event Buyer notifies Seller of impending expiration of a background check, Seller shall provide an updated Seller/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Personnel prior to a background check being conducted, acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Buyer;
- b. Ensure that Personnel have passed the background checks outlined in this subsection prior to requesting access to Buyer's Facilities and/or Cyber Assets. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one (1) year; (ii) has been convicted (within the past seven (7) years) in any court of a crime punishable by imprisonment for a term exceeding one (1) year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be granted access without prior written consent from Buyer. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Seller shall review, evaluate, and document any such residency gap to ensure that it does not pose a risk to Buyer's Facilities or Cyber Assets, prior to making a determination that Personnel have passed the background check;
- c. Ensure that Personnel complete Buyer provided or approved training prior to requesting access;
- d. Ensure that Personnel have passed Seller's drug and alcohol exam and are in compliance with Seller's substance abuse/drug and alcohol policy; and
- e. Keep accurate and detailed documentation to confirm completion dates for background checks and all required training (initial and annual training, to the extent applicable), and certify to Buyer such documentation by completing an information form containing a complete record of the completed background checks for each person who will have access. Buyer has the right to audit Seller's records supporting each Seller/Vendor Information Form submitted to Seller and to verify that the requisite background checks and training were performed. Seller shall provide Buyer with all requested records supporting Seller/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Buyer, but not longer than three (3) business days following the date of such request.
- f. Notify the Buyer in a timely manner of termination or change in status removing the need for access. In the case of Sensitive Personnel and/or involuntary termination, notification must

be immediate. In all other cases, notification must be within one business day.

- g. Seller shall not allow any person who has not met the foregoing requirements of this subsection to perform Work, unless Seller has received prior written consent from Buyer.

**SECTION 11. EXCUSABLE DELAYS:**

- A. Seller shall not be liable for reasonable delays in delivery or failure to perform due directly or indirectly to: (1) causes beyond Seller's reasonable control, (2) Acts of God, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics, (3) Seller's inability to timely obtain necessary materials, items, components or services from suppliers who are affected by the foregoing circumstances, or (4) Buyer Delays in Performance of its obligations hereunder in a timely manner. The foregoing shall apply even though any of such causes exists at the time of signature of the Agreement by Seller or occurs after delays in Seller's performance of its obligations due to other reasons.
- B. In the event of any delay or failure excused by this Section Excusable Delays, Seller shall as soon as practical notify Buyer and shall at the same time, or at the earliest practical date after such notice, specify the revised delivery and performance dates. In the event of such delay, the time of delivery or of performance shall be extended for a reasonable time period to compensate for the time lost by Seller by reason of the delay.

**SECTION 12. SELLER'S INSURANCE AND PERFORMANCE BOND:**

- A. Buyer has established specific indemnification and insurance requirements for contracts/agreements with contractors/consultants to help ensure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to ensure that contractors/consultants are aware of and accept the responsibility for losses or liabilities related to their activities. Exhibit D is attached and included by reference. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this contract/agreement.
- B. The parties do hereby expressly agree that Buyer, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this section Seller's Insurance, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by Buyer's Risk Manager taking into account the nature of the Work and other factors relevant to Buyer's exposure, if any, under this Agreement.
- C. Within ten (10) business days of execution of this Agreement, Seller shall provide Buyer with a surety bond for performance substantially in the form set forth in attachment to this Agreement, which bond shall terminate upon final System Acceptance as set forth in subsection A above.

**SECTION 13. TESTING AND ACCEPTANCE:**

- A. **NSRS Regional Implementation:** An NSRS Region means those 3 divisions as defined in Figure 1 – NSRS Regional Map, contained in Exhibit 10 - Statement of Work- Project Implementation Plan



("NSRS Region"). Each NSRS Region will be implemented simultaneously for each NSRS Member. Buyer and Seller agree that the Project will begin by performing the System Implementation project tasks on an NSRS Region by NSRS Region Basis at the direction of the NSRS Members. The Infrastructure Hardware and associated Software for each NSRS Region shall meet the requirements for the Factory Testing Phase defined below prior to the shipment of the hardware. Buyer, other NSRS Members and Seller will have developed and agreed upon an Acceptance Testing Plan for each NSRS Region by the end of the Detailed Design phase of the Project.

- B. The Factory Testing Phase:** For each NSRS Region, the Factory Testing Phase, NSRS Members and Seller shall approve a Factory Acceptance Test Plan ("FATP"), which shall include visual inspections, verification of electrical parameters of the Hardware and associated Software, functional tests, system resiliency and other aspects of the Hardware and associated Software or systems, conducted in accordance with standards of good engineering practice and including such other quality control and product approval procedures as the manufacturer normally conducts on such Hardware and associated Software, to determine whether the Hardware and associated Software meets its Specifications according to the FATP. For each NSRS Region, the Factory Test Phase shall be conducted by Seller with NSRS Members observing on Hardware it manufactures in addition to third party products in the design. Such processes and results of such tests shall be documented and the documentation for each piece of Hardware and associated Software shall be provided to Buyer and NSRS Members within fourteen (14) business days of the date the Hardware is shipped to Nevada. The presentation of such documentation by Seller or Seller's supplier to Buyer shall constitute Seller's representation that the statements in the documents are true and correct, and that the factory testing according to the FATP and as observed by the NSRS Members for such Hardware and associated Software have been met. The shipment of Hardware for installation shall also constitute Seller's representation that the FATP for such Hardware and associated Software have been met. No Hardware shall be shipped or installed before it has met the FATP. NSRS Members and Seller shall jointly commence the Acceptance Tests on a mutually agreeable date and a representative of Seller and a representative of each NSRS Member shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed.
- C. Regional Acceptance Testing:** Seller shall notify Buyer and the other NSRS Members that an NSRS Region is ready for Acceptance Tests at least fifteen (15) business days before commencement of the Acceptance Tests. Acceptance Testing is defined as set out in the Functional Acceptance Test Procedures, SOW Exhibit 8, and the Coverage Character Test Procedures, SOW Exhibit 9, and shall include such other tests and procedures as Buyer or other NSRS Members may reasonably request during the development of the Acceptance Testing Plan during the Detailed Design Phase of the project. NSRS Members and Seller shall jointly commence the Acceptance Tests on a mutually agreeable date and a representative of Seller and a representative of each NSRS Member shall sign off on the form provided as part of the test procedure as to whether each item of the test was passed or failed. If the NSRS Region does not fulfill the requirements of the Acceptance Tests, and the failure is solely attributable to Seller's obligations under this Contract, Seller shall promptly correct the defects at no additional cost to Buyer and other NSRS Members as needed. Upon correction of the defects the Acceptance Tests for the applicable part of the NSRS Region shall be repeated in accordance with the procedures set forth in this Section and the Acceptance Testing Plan. Successful completion of the Acceptance Tests with all test having passed for an NSRS Region is the sole criterion for technical NSRS Regional Acceptance ("Regional Acceptance") and the initiation of the Warranty Period for the Infrastructure Hardware with respect to the NSRS Region. For avoidance of doubt, initially, the first NSRS Region will be implemented and tested. Next, the second NSRS Region will be implemented. During the testing of the second NSRS Implementation Region, the previously implemented NSRS region components that are common to both regions will be tested. Next, the third NSRS Region will

be implemented. During the testing of the third NSRS Implementation Region, the previously implemented components that are common to all regions will be tested.

- D. 30-Day Operational Burn-in Phase:** The 30-Day Operational Burn-Test for each NSRS Region shall follow immediately after the successful completion of Regional Acceptance for each NSRS Region. During this time, representatives of Seller, Buyer and other NSRS Members shall observe the test procedure as defined in the Functional Acceptance Test Procedures in Exhibit 8 of the SOW. The 30-Day Operational Burn-in Phase will last for 30 consecutive days and shall be loaded with subscribers as agreed with the Member, but shall run anew in the event of a Major Failure as defined in the Acceptance Test Plan, with the 30-day clock restarting after Seller has corrected the cause of the Major failure, which Seller shall correct at Seller's expense.
- E. Final System Acceptance:** Final Acceptance for the NSRS shall occur when (i) Regional Acceptance has occurred for each NSRS Region including the 30-Day Operational Burn-In Test (ii) the Hardware and Software for the System, and Services have been furnished, delivered, installed and (iii) Seller has furnished Buyer with all document deliverables, and (iv) Seller and Buyer agree on a list of nonservice affecting defects in the appearance, operation or installation of the Hardware (the "Punch List") which Seller shall promptly resolve within and agreed reasonable timeframe.
- F. Preplanning Regional Acceptance Meeting:** When Buyer or any NSRS Member recognizes that they cannot meet a contractual obligation for performance under their respective Agreement with Seller, including but not limited to slippage in the Project Schedule, obligations under the Responsibility Matrix, or other material changes such that any region cannot be implemented per the Project Schedule, Seller and all NSRS Members shall meet to mutually agree on a Change Order. Such Change Order may affect the planned Coverage or other technical requirement for the NSRS region under implementation and may result in a modification to the Coverage Guarantee for that NSRS Region. The Change order shall ensure the continuation of the implementation of the NSRS Region in a timely manner so as not to delay the overall implementation for all NSRS Members.
- G.** Notwithstanding the acceptance testing of the NSRS Regions set forth in subsections C, and the exclusion of the shared Connect Cores as defined in Exhibit 10 - Statement of Work - Project Implementation Plan, if Buyer commences use of any portion of the System, in an NSRS Region for its intended purpose, other than for the express purpose of training, testing, or pre-acceptance site usages as mutually agreed upon by Seller and Buyer in writing, prior to Regional Acceptance of that NSRS Region, the applicable portion of the purchase price for that NSRS Region shall be due and payable and the NSRS Region will be deemed accepted. The Warranty Period for Infrastructure Hardware for the applicable portion of the System put into use together with the associated installation Services shall be deemed to have commenced concurrently with the use of the applicable portion of the System for its intended purpose. The use of the applicable portion of the System for its intended purpose shall be deemed to have occurred when Buyer commences to use and rely primarily on the applicable portion of the System for its communications.
- H. Pre-acceptance Site Usage:** Before Regional Acceptance has occurred in any Region, Buyer may begin using completed sites with written approval of Seller for Buyer defined pre-acceptance testing or non-critical communication needs during transitional period of implementation. Buyer acknowledges that before Regional Acceptance has occurred that the sites operating in such region are not fully operational as designed and that certain anomalies may occur including, but not limited to, occurrences of the following: dropped calls, unplanned system interruption, or variance in coverage from the guaranteed coverages in this Agreement. BUYER AGREES ONLY TO ALLOW NON-PUBLIC SAFETY USERS TO USE A SITE BEFORE REGIONAL ACCEPTANCE AND WILL NOT ALLOW PUBLIC SAFETY USERS OR FIRST RESPONDERS TO USE A SITE BEFORE

REGIONAL ACCEPTANCE AND WILL NOT ALLOW ANY USE BEFORE REGIONAL ACCEPTANCE REQUIRING FAIL-SAFE, EMERGENCY OR MISSION CRITICAL PERFORMANCE IN WHICH THE FAILURE OF THE EQUIPMENT COULD LEAD TO DEATH, PERSONAL INJURY, PHYSICAL OR ENVIRONMENTAL DAMAGE. BUYER ACCEPTS ALL RESPONSIBILITY AND LIABILITY FOR RADIO SYSTEM USAGE BEFORE REGIONAL ACCEPTANCE. During any period in which Pre-acceptance Site Usage is granted by Seller to Buyer, Buyer acknowledges that Seller has no liability to keep sites operational and Coverage will not be guaranteed until Regional Acceptance is complete. Further, Buyer acknowledges that site or system outages will occur, and that Seller has no commitment to inform Buyer of any such outages, however if planned outages are expected Seller shall notify System Administrator twenty-four (24) hours in advance. To ensure the continuation of the implementation of the NSRS Region in a timely manner so as not to delay the overall implementation for all NSRS Members, Seller shall have no obligation to support users operating on any Pre-acceptance Site.

- I. As used in the Agreement, the term "Regional Acceptance Date" shall mean the date of "Acceptance" of one of the NSRS Regions, which shall be deemed to occur upon the earlier of: (1) the date on which the NSRS Region is deemed accepted pursuant to subsection (C) above, or (2) the date on which the Region is deemed accepted pursuant to subsection (G) above.
- J. Commitments and Assumptions.
  - a. Seller will provide a Testing Coordinator who will establish the approach, reasonably acceptable to the Parties, to measure, record and report progress on all testing activities.
  - b. Seller will ensure the technical environment is set up to support each round of testing.
  - c. Testing activities for each portion of the Project will be completed in accordance with the Acceptance Testing Plans.
  - d. Seller will promptly provide a written summary of each round of comprehensive Acceptance Testing.
  - e. All Acceptance Testing will be performed by Seller with the cooperation and under the observation and supervision of Buyer and other NSRS Members.

**SECTION 14. SOFTWARE LICENSE.**

Subject to the terms and conditions of the Software License Agreement attached hereto as an exhibit to this Agreement, Buyer is granted a license to use the Software only in conjunction with the System purchased under this Agreement. "Software" means the "Licensed Programs" as defined in the Software License Agreement.

**SECTION 15. COVERAGE:**

Seller's representations concerning the distance at which usable radio signals will be transmitted and received by Hardware supplied hereunder are set forth in the Statement of Work. Coverage for the System as approved at the Detail Design review, shall be measured as provided in the Testing and Acceptance section of this Agreement.

**SECTION 16. WARRANTIES:**

**A. Hardware and Services**

The warranties for the System, including all Services, Software and Hardware, set forth in the Purchase Agreement Documents shall begin on the date of the first NSRS Regional Acceptance Date and continue for a period of one year following Acceptance of the last NSRS Region implemented

(the "Warranty Period"). Seller warrants for the Warranty Period, that the Hardware and installation Services furnished by Seller under this Agreement, and further specified in Statement of Work, Exhibit 11, Warranty Plan, shall be new, free from defects in material and workmanship and shall conform to the Agreement specifications. Any Services provided during the Warranty Period are set forth in the Scope of Work. Any and all claims for breach of this warranty are conclusively deemed waived unless made within the Warranty Period. The warranty period for additional Hardware purchased by Buyer from Seller after System Acceptance shall be warranted for the following periods of time from the date the Hardware is delivered to Buyer:

- i. for mobile and portable radios ("Subscriber Units"), twenty-four (24) months.
- ii. for all other Hardware, one (1) year.

- B. Subscriber Units:** Subscriber Unit warranty period shall begin at the date put into service and run for a period of twenty-four 24(months). Subscriber Unit accessories, including batteries, are warranted for a period of one year. For purposes of this Warranty the Subscriber Unit's batteries supplied by Seller shall be deemed defective if: (1) the battery capacity is less than 80% of rated capacity, or (2) the battery develops leakage. Replacement batteries shall be warranted only for the remaining unexpired portion of the Warranty Period. This warranty becomes void if: (1) the battery has been subjected to any kind of misuse, detrimental exposure, or has been involved in an accident, or (2) the battery is used in equipment or service other than the Hardware for which it is specified.
- C.** During the Warranty Period if any component of the Hardware or portion of the installation Services fails to meet the foregoing warranties, Seller's sole obligation and Buyer's exclusive remedy under this warranty shall be the correction by Seller of the failure at Seller's option: (1) by repairing any defective component of the Hardware, or (2) by furnishing any necessary repaired or replacement parts, (3) by the redoing of the faulty installation, or replacement per section D, E or F below. Any such failure, or the repair or replacement of the defective component or the redoing of any installation, shall not extend the Warranty Period. Where such failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price. Seller will be responsible for all charges incurred in returning defective parts to Seller's plant and shipping repaired or replacement parts to Buyer. All warranty labor must be performed by an authorized service group approved by Seller either at its place of business, for mobile or portable equipment, or at the Buyer's location for fixed location equipment should Seller determine that it is not feasible to return the fixed location equipment to Seller's authorized service group.
- D. Harris Manufactured Infrastructure Equipment – Defects & Recurring Failures - Any Harris manufactured fixed equipment or Harris manufactured fixed equipment module that fails twice during the acceptance test or twice during the first 12 months after System Acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the Seller and Members. If the defect is deemed by the Members and Harris to be systemic after the investigation is completed, the Seller shall then be responsible for replacing at no additional cost to the Members all components and/or equipment that is deemed to be causing the systemic failure.**

If, during the first 5 years after Final System Acceptance, 10% of a single type of Harris manufactured component, equipment or material fails, an investigation by the Seller and Members will be performed on any such failed component, equipment or material. If such failure is deemed by Members and Harris to be due to a product defect, Seller shall replace one hundred percent (100%) of this type of component, equipment or material NSRS-wide at no additional cost to the Members, regardless of whether or not it has failed, including any component, equipment or material previously replaced.

- E. Harris Manufactured Dispatch Equipment – Defects & Recurring Failures - If 10%** Harris Manufactured of console equipment that fails for the same reason during the acceptance test or during the first 12 months after equipment acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the Seller and the concerned Member. If the defect is deemed by Member and Harris to be systemic after the investigation is completed, the Seller shall then be responsible for replacing at no additional cost to the Member all Harris Manufactured console equipment related to the recurring or systemic failure, not only the specific equipment affected.
- F. Harris Manufactured Subscriber Unit Equipment – Defects & Recurring Failures - If 10%** Harris Manufactured of Subscriber Unit equipment that fails for the same reason during the acceptance test or during the first 12 months after equipment acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the Seller and the concerned Member. If the defect is deemed by Member and Harris to be systemic after the investigation is completed, the Seller shall then be responsible for replacing at no additional cost to the Member all Harris Manufactured Subscriber Unit equipment related to the recurring or systemic failure, not only the specific equipment affected.
- G. NSRS Member Performed Warranty Repair -** The Members shall have the right to perform any maintenance and/or repairs required during the warranty period without voiding or affecting the Seller’s warranty. Member technicians that complete the repairs must have taken all training classes outlined by Harris in the Statement of Work, Exhibit 11 – Warranty Plan , otherwise the work may void the warranty for said component. If Member work causes further system issues because of improper or negligent repair and a deeper level of Harris support be required, Harris may charge Member for such additional support if requested by member.
- H.** Any additional purchases of equipment, including radios, and installation services which may be purchased by Members and delivered or performed by Seller after Final System Acceptance, shall be warranted on the same terms, limitations, and exclusions as are set forth herein, except that the warranty on the equipment and installation services shall be for a period of two (2) years for additional Subscriber Units items from the date of delivery of that item of equipment, one (1) year for additional Infrastructure Hardware items from the date of delivery of that item of equipment, and one (1) year from the date of completion of that installation service.
- I.** With the exception of the NSRS Member Performed Warranty Repair as defined in section G. Above, Seller's obligations shall not apply to: (1) Hardware or components thereof which are normally consumed in operation, or, or (2) defects which are the result of improper storage, use, or installation performed by other than Seller, maintenance performed by other than Seller, or repair performed by other than Seller, or (3) Hardware which has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident, or (4) Hardware or installations altered or repaired by any party other than Seller without Seller's prior written consent.
- J.** While on Member’s premises, Seller, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations. Seller shall be responsible for care of Buyer’s equipment and any damage to facilities during servicing.
- K. Coverage and System Integration Warranty.** Notwithstanding the other provisions of this Section Warranties, Seller’s only Warranty as to radio coverage is that the System, prior to Regional Acceptance, shall have successfully passed the coverage tests in the Acceptance Test Plan. This

Warranty is operative only when the Shared Regional Implementation occurs. For Coverage and System Integration purposes, the Testing and Acceptance section of this agreement defines on a Regional basis, that if the NSRS Region does not fulfill the requirements of the Acceptance Tests, and the failure is solely attributable to Seller obligations under this Contract, Seller shall promptly correct the defects at no additional cost to the Member and other NSRS Members as needed.

**L. Software**

The warranty for the Software is set forth in the Software License Agreement. The Seller shall update all devices to the same and latest release level prior to the conclusion of the Warranty Period at no additional cost to the Members.

**M. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION AND IN THE SOFTWARE LICENSE AGREEMENT CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE HARDWARE, SOFTWARE AND SERVICES AND THE BUYER'S EXCLUSIVE REMEDIES IN THE EVENT SUCH WARRANTIES ARE BREACHED. THEY ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES.**

**SECTION 17. COOPERATIVE PURCHASING:**

**Purchases by Other Public Entities:** This Agreement may be used by other public bodies to purchase subscriber equipment at the prices set forth below and in accordance with the terms, including applicable warranties of this Agreement unless otherwise specified herein. This pricing cannot be combined with any other Harris promotional offers. Such public bodies shall place their own order(s) directly with Seller, and Seller shall deal directly with any public body the Buyer approves to use the Agreement. The terms and conditions of this Agreement shall govern purchases by other public bodies unless they and the Seller agree to execute separate contracts. With the approval of the Seller, any public body using this Agreement may add terms and conditions required by statute, ordinances, or regulations. To the extent permitted by law, the parties may agree to additional or modified terms and conditions unique to the public body or as required by the circumstances surrounding the purchase. Buyer is not liable for the obligations of any public body which joins or uses this Agreement to purchase subscriber equipment at the prices set forth in the pricing schedule and in accordance with the terms, including applicable warranties of this Agreement unless otherwise specified herein. Buyer, its officials and employees are not responsible for placement of orders, invoicing, payments, contractual disputes, or any other transactions between the Seller and any other public bodies. In no event shall Buyer, its officials or employees be responsible for any costs, damages or injury resulting to any party from use of a Buyer contract. If, when preparing such a contract, the additional terms and conditions of a public body seeking to purchase pursuant to cooperative procurement are unacceptable to the Seller, the Seller may withdraw its consent to extension of the contract to that particular body. Buyer, assumes no responsibility for any notification of the availability of this Agreement for use by other public bodies, but the Seller may carry out such notification.

**SECTION 18. INTERFERENCE:**

Radio System coverage and performance are subject to degradation due to anomalous propagation and interference beyond the reasonable control of Seller. Seller cannot be responsible for degradation or disruption of Service caused by operation of other radio Systems or by natural phenomena or other interference over which the Seller has no reasonable control. In the event of a case of degradation due to interference by an

outside party, Seller will provide engineering support to Buyer at Buyer's expense to support Buyer's efforts in resolving the interference issue with the outside party. In the event of a case of degradation due to interference of the Buyer's System caused by Seller, Seller will resolve the interference issue at no cost to the Buyer.

#### **SECTION 19. PATENTS:**

- A.** Seller warrants that the System furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If Buyer notifies Seller promptly of the receipt of any claim that the System infringes a United States patent or copyright and gives Seller information, assistance and exclusive authority to settle and defend such claim, Seller at its own expense shall defend, or may settle, any suit or proceeding against Buyer so far as based on a claimed infringement which breaches this warranty. If, in any such suit arising from such claim, the continued use of the System for the purpose intended is enjoined by any court of competent jurisdiction, Seller shall, at its expense and option, either: (1) procure for Buyer the right to continue using the System, or (2) modify the System so that it becomes non-infringing, or (3) replace the System or portions thereof so that it becomes non-infringing, or (4) remove the System and refund the purchase price (less reasonable depreciation for use). The foregoing states the entire liability of Seller for patent or copyright infringement by the System and is subject to any limitation of total liability set forth in this Agreement.
- B.** The preceding subsection (A) shall not apply to: (1) any portion of the System which is manufactured to Buyer's design, or (2) the use of the System in conjunction with any other apparatus or material not supplied by Seller to the extent that such conjoined use causes the alleged infringement. As to any portion of the System or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement.
- C.** THE PATENT AND COPYRIGHT WARRANTY AND INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER PATENT AND COPYRIGHT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY.

#### **SECTION 20. LIMITATION OF LIABILITY:**

- A.** Except for Seller's liability to third parties for its willful misconduct or negligent acts or omissions as more particularly described in the Indemnification Section of this Agreement, the total liability of Seller, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in contract, warranty, tort strict liability or otherwise, arising out of, connected with, or resulting from the performance or non-performance of this Agreement or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Service, shall not exceed the Total Price of the Agreement. Except as to title, any such liability shall terminate upon the expiration of the Warranty Period.
- B.** IN NO EVENT, WHETHER AS A RESULT OF BREACH OF AGREEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS

OF USE OF THE HARDWARE OR ANY OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR DOWNTIME COSTS.

- C. Any action for any claim of any kind for any loss or damages arising out of, connected with, or resulting from the performance, non-performance or breach of the Agreement, or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Services, shall be commenced within statutory limits defined by the State of Nevada after the cause of action accrued.
- D. The provisions of this Section, LIMITATION OF LIABILITY, shall apply notwithstanding any other provisions of this Agreement or any other agreement.
- E. The provisions of this Section, LIMITATION OF LIABILITY, shall survive the expiration or termination of this Agreement.

**SECTION 21. TERMINATION AND REMEDIES:**

- A. Any agreement which extends beyond the term of any Washoe County Commissioner in office at the time of the signing of this Agreement is binding beyond that term only if funding is appropriated. NRS 244.320. Washoe County reasonably believes that funds can and will be obtained sufficiently to make all payments during the term of this Agreement. In the event the County fails to appropriate or budget funds for the purposes specified in this Agreement, or that County has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes in this Agreement, this Agreement shall be terminated without penalty, charge or sanction to the County.
- B. A default or breach may be declared with or without termination. This Agreement may be terminated by either Party upon written notice of default or breach to the other Party as follows:
  - a. In the event of a material breach of this Agreement by Seller which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Seller by Buyer, Buyer shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its payment obligations under the Agreement for as long as the breach continues uncorrected; or (2) terminate this Agreement by written notice to Seller if the breach remains uncorrected. The following shall constitute material breaches of this Agreement:
    - 1. Failure by Seller to reasonably provide or perform any of the services or duties called for in this Agreement within the time requirements provided for in this Agreement, or any agreed to extensions.
    - 2. violation by Seller of any State, Federal or local law, or failure by Seller to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations.
    - 3. failure by Seller to carry applicable licenses or certifications as required by law.
    - 4. failure of Seller to comply with reporting requirements contained herein.
    - 5. inability of Seller to perform the Work provided for herein.
    - 6. Seller becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of a bankruptcy court



- C. Except as otherwise provided in this Agreement, in the event of: (1) any failure by Buyer for sixty (60) or more days to make any payment when due, or (2) any other material breach of this Agreement by Buyer which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Buyer by Seller, Seller shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its obligations under this Agreement for as long as the breach remains uncorrected; or (2) terminate this Agreement by written notice to Buyer if the breach remains uncorrected.
- D. Except as provided in Section 21 ¶A , in the event Buyer terminates this Agreement as provided herein, all finished and unfinished Hardware and Documentation Deliverables produced or made by Seller for Buyer ,up to and including the date of termination, under this Agreement shall become the property of Buyer and Seller shall be entitled to receive compensation, including all associated fees accrued up to the point of termination, in accordance with the terms of this Agreement for any such Hardware and Documentation Deliverables. Notwithstanding the above, Seller shall not be relieved of liability to Buyer for damages sustained by Buyer by virtue of any breach of this Agreement by Seller described in subsection B above and, after providing Seller with written notice of breach as set forth in subsection B, Buyer may withhold any payments to Seller for the purpose of set-off of any damages, as agreed upon or finally adjudicated, against such payment. Harris shall use commercially reasonable efforts to resell or return any unopened Equipment after termination.

## **SECTION 22. CONFIDENTIALITY:**

- A. During the term of this Agreement, it is anticipated that one party (hereafter the “Disclosing Party”) may disclose to the other party (hereafter the “Receiving Party”) information which the Disclosing Party considers proprietary and confidential. Accordingly, with respect to any specification, drawings, sketches, models, samples, tools, technical information, confidential business information or data, in written or other tangible form which: (1) has been designated in writing by the Disclosing Party as confidential or proprietary, or (2) is of the type that the Receiving Party customarily treats as confidential or proprietary, and which is furnished by the Disclosing Party to the Receiving party in contemplation of or under this Agreement (hereinafter “Information”), the Receiving Party shall treat such Information, for a period of five (5) years after the Effective Date of this Agreement, as confidential information with the same degree of care as the Receiving Party affords to confidential information of its own of a similar nature and shall not reproduce any such Information, in whole or in part, except as specifically authorized in writing by the Disclosing Party.
- B. The provisions of the preceding subsection shall not apply to any Information which:
1. is or shall become publicly available without breach of this Section Confidentiality, on the part of the Receiving Party;
  2. is already known by the Receiving Party prior to receipt from the Disclosing Party;
  3. is independently developed by the Receiving Party;
  4. is rightfully obtained by the Receiving Party from third parties without restriction; or
  5. is required to be disclosed by appropriate governmental or judicial order provided that Receiving Party gives Disclosing Party prior written notice of such order and assists Disclosing Party in taking reasonable actions to restrict such order.
  6. Is declared by Federal or Nevada law such as NRS Chapter 239 to be public.

- C. The provisions of this Section, Confidentiality, shall survive the expiration or termination of this Agreement.
- D. The confidentiality obligations of this Section, Confidentiality, shall not apply to Software, the confidentiality and other rights and obligations with respect to which are set forth in the Software License Agreement.

**SECTION 23. COMPLIANCE:**

Seller agrees to comply with all federal, state and local laws, ordinances, codes, rules and regulations in effect as of the Effective Date of this Agreement that may in any way affect the Work by Seller hereunder. Any Hardware or Software furnished by Seller under this Agreement shall comply in all material respects with federal, state and local laws and regulations applicable to the manufacture, packing, sale and shipment of such Hardware or Software as of the Effective Date of this Agreement and shall comply with any amendments thereto which may have come into effect prior to the time such Hardware or Software are delivered provided that the price and, if necessary, delivery of such Hardware or Software shall be equitably adjusted to compensate Seller for the effect of compliance with any such amendments.

**SECTION 24. NOTICES:**

Notices and other communications between the parties shall be transmitted in writing by certified mail or nationally recognized overnight courier service to the parties at the addresses set forth below and shall be deemed effective upon receipt by the receiving party. Either party may change its address by giving notice in writing thereof to the other party.

**IF TO BUYER:**

Craig Betts, Chief Information Officer  
Washoe County, Technology Services  
1001 E. Ninth St.  
Reno, NV, 89512  
Phone: (775) 328-2355  
Email: [cbetts@washoecounty.us](mailto:cbetts@washoecounty.us)

**WITH A COPY TO:**

Quinn Korbolic, IT Manager  
Washoe County, Technology Services  
1001 E. Ninth St.  
Reno, NV, 89512  
Phone: (775) 328-2348  
Email: [qkorbolic@washoecounty.us](mailto:qkorbolic@washoecounty.us)

**BUYER INVOICE CONTACT:**

Sara Delozier  
Washoe County, Technology Services  
1001 E. Ninth St.  
Reno, NV, 89512  
Phone: (775) 328-2352  
Email: [sdelozier@washoecounty.us](mailto:sdelozier@washoecounty.us)

**IF TO SELLER:**

Harris Corporation

221 Jefferson Ridge Parkway  
Lynchburg, Virginia 24501  
Attn: [Scott Tangeman]

WITH A COPY TO:

Harris Corporation  
221 Jefferson Ridge Parkway  
Lynchburg, Virginia 24501  
Attn: [Thomas Clair]

SELLER INVOICE CONTACT:

Harris Corporation  
221 Jefferson Ridge Parkway  
Lynchburg, Virginia 24501  
Attn: April Gallagher  
434-455-9272 / agalla03@harris.com

**SECTION 25. ORDER OF PRECEDENCE:**

The Statement of Work and the following Exhibits are expressly incorporated herein by reference and, together with this Agreement, constitute the Agreement Documents. In the event of a conflict among or between the Agreement Documents, the documents shall control in the order of precedence set forth below:

1. Amendments to this Agreement
2. This Agreement (not including the Exhibits and documents listed below)
3. Detailed Design Documents
4. Exhibit A - Statement of Work, with Attachments
5. Harris Proposal
6. RFP
7. Exhibit B - Software License Agreement
8. Exhibit C – Form of Surety Bond for Performance

**SECTION 26. TERM:**

The term of this Agreement shall commence upon the Effective Date of this Agreement and shall continue for five (5) years from the date of Final System Acceptance. The term of the Software license is set forth in the Software License Agreement.

**SECTION 27. ENTIRE AGREEMENT:**

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

**SECTION 28. AMENDMENT:**

The parties expressly agree that this Agreement shall not be amended in any fashion except in a writing(s) executed by authorized representatives of both parties.

**SECTION 29. SEVERABILITY:**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

**SECTION 30. WAIVER:**

No term of this Agreement may be waived except in a writing signed by the party waiving enforcement. No term of this Agreement shall be deemed to be waived by reason of any failure to previously enforce such term. In no event shall the making of any payment required by this Agreement constitute or be construed as a waiver by Buyer of any breach of the covenants of this Agreement or a waiver of any default of Seller and the making of any such payment by Buyer while any such default or breach shall exist shall in no way impair or prejudice the right of Buyer with respect to recovery of damages or other remedy as a result of such breach or default.

**SECTION 31. HEADINGS:**

Section headings are inserted for convenience only and shall not be used in any way to construe the meaning of terms used in this Agreement.

**SECTION 32. GOVERNING LAW:**

The parties agree that this Agreement is entered into in the State of Nevada and shall therefore be governed by the laws of Nevada without resort to conflict of laws principles. Venue for any legal proceedings shall be in any state or federal court in Washoe County, Nevada, which the Parties agree shall have exclusive jurisdiction over disputes arising out of the interpretation of this Agreement. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, law shall be controlling. Venue for any legal proceedings shall be in any state or federal court in the State of Nevada.

**SECTION 33. ASSIGNMENT; SUCCESSORS AND ASSIGNS:**

This Agreement shall not be assigned nor any interest or obligation in this Agreement transferred by either Party without the written consent of the other Party, which shall not be unreasonably withheld or delayed. Notwithstanding the above, Seller may assign this Agreement, without consent, in the event of a change of controlling ownership interest (either directly or indirectly) in Seller or in the event of merger, recapitalization, consolidation, other business combination or sale of all or substantially all of the assets of Seller. In addition, Seller may also assign or transfer, without consent, claims for money due or to become due Seller from Buyer under this Agreement to a bank, trust company or other financial institution if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to Seller shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement. Seller shall promptly provide to Buyer notice of any such permitted assignment or transfer without consent.

**SECTION 34. ANTI DISCRIMINATION**

In connection with the performance of work under this Agreement, the parties agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation gender identity or expression, age, disability or national origin including, without limitation, with regard to 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, without limitation, apprenticeship. The parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials

During the performance of this Agreement, the Seller, for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations: The Seller shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21 and the non-discrimination provisions of NRS Chapter 613 as they may be amended from time to time (collectively "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The Seller, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Seller shall not participate either directly or indirectly in the discrimination prohibited by the Regulations, including employment practices, when the Agreement covers a program set forth in the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the Seller for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Seller of the Seller's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap, or national origin.

d. Information and Reports: The Seller shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by the County to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Seller is in the exclusive possession of another who fails or refuses to furnish this information, the Seller shall so certify to the County and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the Seller's noncompliance with the nondiscrimination provisions of this Agreement, the County shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Seller under the Agreement until the Seller complies, and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part

g. Incorporation of Provisions: The Seller will include the provisions of Paragraphs (a) through (f) above in every subcontract including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The seller will take such action with respect to any subcontract or procurement as the County may direct as a means of enforcing such provisions including sanctions for non-compliance. In the event Seller becomes involved in, or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Seller may request the County to enter into such litigation to protect the interests of the County and the Seller may request the United States to enter into such litigation to protect the interests of the United States.

## SECTION 35. DISPUTE RESOLUTION PROCEDURES

### Issue Resolution Ladder

The Issue Resolution Ladder is the process for elevating Disputes from the Project's field level to various levels of review, up to the Parties' executive management if necessary, with defined time limits for each level of review. The goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field level as possible while recognizing the requirement to elevate the Dispute to the next level of review before the Dispute impacts cost or schedule. The Issue Resolution Ladder shall consist of four (4) levels of review and corresponding time limits to review, as follows:

Level of Review	Seller Reviewer	Buyer Reviewer	Time Limit
4	Seller CEO	Office of the County Manager	2 weeks
3	Regional Manager	Chief Information Officer	2 weeks
2	Project Manager	Project Manager	1 week
1	Technical Lead	Technical Lead	3 days

The individuals from the Buyer's and Seller's respective organizations filling the roles of reviewers in the Issue Resolution Ladder, and the documentation required for each level of review in the Issue Resolution Ladder, shall be identified by the respective team members. If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute within the time limits set forth, the reviewers shall elevate the Dispute to the next level of review. If all four (4) levels of review have been exhausted, then Section B. below shall apply.

#### **For purposes of Outcome of Issue Resolution Ladder**

1. If the Buyer and Seller succeed in resolving an issue using the Issue Resolution Ladder, the Parties shall memorialize the resolution in writing, including execution of any Change Order as appropriate, and promptly perform their respective obligations in accordance therewith.
2. If a Dispute is not timely resolved using the Issue Resolution Ladder, then the parties agree to submit the dispute to non-binding mediation using a single mediator mutually agreed upon by the parties and following the Commercial Mediation Rules of the American Arbitration Association ("AAA"). As to the appointment of the mediator, and in accordance with the AAA, section M-4 Appointment of the Mediator, the Parties shall mutually agree to appoint an impartial mediator residing in Nevada or familiar with Nevada law and appoint such mediator for any dispute submitted to the American Arbitration Association for mediation or conciliation. If the dispute is unable to be resolved through good faith negotiations and non-binding mediation, then the Parties may pursue all of their legal and equitable remedies.

**State court Litigation** Only if the Parties are unable to settle a Dispute following Section B. above, then either Party may thereafter file a lawsuit in the Nevada Second Judicial District Court located in Washoe County, Nevada. Said lawsuit shall be filed no later than 180 days following issuance of the mediation finding. Service of the complaint shall be as prescribed by law and all parties agree to waive jury trial and rely on an objective procedure before a judge experienced in matters of commercial law.

### **Continuation of Work and Payments**

1. At all times during Dispute Resolution Procedures, Seller and all Seller-Related Entities shall continue with the performance of the Work and their obligations, including any undisputed Work or obligations, diligently and without delay, in accordance with this Contract, except to the extent enjoined by order of a court or otherwise approved by the Buyer in its sole discretion. Seller acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if Seller's position in connection with the Dispute ultimately prevails.
2. During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals, and applicable Governmental Rules.
3. During the course of any Dispute Resolution Procedures, Buyer shall continue to pay to Seller, when due, all undisputed amounts owing under this Agreement.

**Joinder-** Seller agrees that, (a) at the Buyer's request, Seller shall take appropriate action to join third parties and Subcontractors involved in the design or construction of any part of the Project as parties in dispute resolution proceedings under this Section 19, and (b) Seller will allow itself to be joined as a participant in any dispute, arbitration or other proceeding that involves Buyer and any other Person relating to the Project. This provision is for the benefit of the Buyer and not for the benefit of any other party.

**Harris Effect on Surety** - Any decisions made in accordance with this Section 35 that are binding on Seller shall also be binding on the Surety under the Performance Bond; provided, however that unless the Surety is a party to such proceedings, such decisions shall not affect any defenses which are special to the Surety (i.e., defenses available to the Surety which could not have been asserted by Seller in the underlying proceeding). In the event that the Surety is a party to any proceedings, it shall have the right to, and must, assert any such special defenses therein.

**Emergency Dispute Resolution** - If a Dispute arises which must be resolved expeditiously to prevent serious damage to person or property, or serious interference with a Critical Path, both Parties shall make every effort to resolve such Dispute quickly. In such case, if Seller's Project Manager and the Buyer's Project Manager cannot reach a resolution of that Dispute within twenty-four (24) hours, they must refer the Dispute to the Buyer's Director and Seller's Chief Executive Officer (or other officer with authority to make final decisions subject only to board approval and any required third party approvals) for a meeting between the Buyer's Director and Seller's Chief Executive Officer to occur within the following twenty-four (24) hours. Once the urgent aspects of the Dispute have been resolved, the Parties may continue with the remaining procedures for dispute resolution if necessary and to the extent applicable.

**Time Limitation** – Seller acknowledges and agrees that Buyer is subject to substantial constraints which have resulted in limitations on its ability to increase the Contract Price or extend a Completion Deadline. Seller therefore acknowledges and agrees that, due to limitations on funding for the Project, prompt resolution of Disputes is of vital importance to Buyer. Seller agrees that the time limitations stated in the Contract for the filing of Claims and/or complaints with the Disputes Review Team and any subsequent State court litigation pursuant to Section 1.1.2 are necessary and reasonable.

## **SECTION 36. LIQUIDATED DAMAGES**

Seller agrees to be subject to liquidated damages for failure to achieve Regional Acceptance in any NSRS Region by the date set forth in this Agreement or a change to the Regional Acceptance Date set forth in any revision to the project schedule, (described in Exhibit 6 Project Schedule), and further agrees that such liquidated damages are intended to be compensatory and do not constitute a penalty for late delivery. The parties acknowledge and agree that the harm suffered by reason of a failure to achieve a Regional Acceptance by the date set forth in this Agreement would be difficult or impossible to calculate with any certainty and that the liquidated damages set forth below represent a reasonable estimate of that harm. The liquidated damages set forth below are specifically applicable to a failure to obtain Regional Acceptance by the dates set forth in this Agreement only. Buyer's rights and remedies for other than late delivery are set forth in this Agreement and as are otherwise available at law or equity. If Seller fails to meet the schedule date for Regional Acceptance set forth in this Agreement, and after written notice from the Buyer and after thirty (30) calendar day opportunity to cure, the Buyer may assess Liquidated Damages against Seller as defined below:

a. Damages amount per day  $((.005) \times (\text{Seller's contracted Total Agreement Price of effected NSRS Region})) / 60$ .

b. In no event shall the maximum amount of liquidated damages assessed against Seller for late deliveries under this Agreement exceed one half of one percent (.005 %) of the Total Agreement Price as agreed to in Section 6.

c. Notwithstanding the above, should the Project Schedule change due to a Change Order under this Agreement, the Project Scheduled date for Regional Acceptance may be extended to meet project requirements as mutually agreed by both parties.

d. If one of the NSRS members causes a delay to the schedule, Seller agrees to collaboratively draft a Change Order with the other NSRS members and Seller to continue the NSRS Regional Implementation. Such Change Order shall address any design and project schedule changes needed to effectively partially implement the NSRS Region. The NSRS Member causing the delay shall reimburse Harris through such Change Order for any costs including, but not limited to, redesign, remobilization, retesting or any re-execution of any activities defined in the Scope of Work in an NSRS Region where the delay occurred completing the NSRS Region's implementation for Seller at a later date. A delayed NSRS Region under this section shall not be subject to future Liquidated Damages. However, in the event that a subsequent revised schedule date is set in an approved Change Order and Seller fails to meet such date, it shall be subject to liquidated damages pursuant to this Section 36.

e. Seller shall have no liability for liquidated damages for any delay in achieving Regional Acceptance, if, after the Regional Acceptance Date, the delay is attributable to reasons other than Seller's delay, including but not limited to delay by NSRS Members and the Buyer's other Sellers, FORCE MAJEURE EVENTS OR OTHER EVENTS BEYOND SELLER'S REASONABLE CONTROL.



However, in the event that a subsequent revised schedule date is set in an approved Change Order and Seller fails to meet such date, it shall be subject to liquidated damages pursuant to this Section 36.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement.

**BUYER**  
[WASHOE COUNTY]

By: Marsla Berkbigler  
Name: Marsla Berkbigler  
Title: Chair County Commission  
Date: 9-25-18

Witness:

By: Nancy L. Parent  
Name: Nancy Parent  
Title: County Clerk  
Date: 9-25-18



By: Pamela Mann  
Name: Pamela Mann  
Title: Purchasing & Contracts Manager  
Date: 9-27-18

Witness:

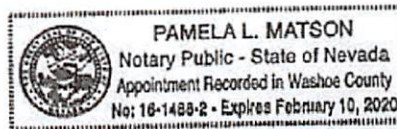
By: Pamela Matson  
Name: Pamela L Matson  
Title: Account Clerk II / Notary  
Date: 9/27/18

**SELLER**  
HARRIS CORPORATION ACTING  
THROUGH ITS COMMUNICATION  
SYSTEMS SEGMENT

By: Thomas Clair  
Name: Thomas Clair  
Title: Contracts Manager  
Date: 9/17/2018

Witness:

By: Patricia K. Harpring  
Name: PATRICIA K. HARPRING  
Title: Executive Assistant  
Date: 9/17/18





**LIST OF EXHIBITS**

- Exhibit A - STATEMENT OF WORK (with Attachments)
- Exhibit B - SOFTWARE LICENSE AGREEMENT
- Exhibit C - FORM OF SURETY BONDS FOR PERFORMANCE
- Exhibit D - INDEMNIFICATION AND INSURANCE SPECIFICATIONS

**Carol Akers**

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**Subject:** FW: NDOT Permission to joinder

**From:** James Jacklett  
**Sent:** Wednesday, October 10, 2018 10:43 AM  
**To:** Carol Akers  
**Subject:** NDOT Permission to joinder

Carol,  
The email below from NDOT provides the authorization to purchase via joinder to Harris Corp.

---

**From:** Whalen, James J [<mailto:JWhalen@dot.nv.gov>]  
**Sent:** Wednesday, October 10, 2018 10:18 AM  
**To:** James Jacklett  
**Cc:** Daniels, Seth L  
**Subject:** RE: RE:

**This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.**

---

Good Morning James,

NDOT Agreement P697-16-016, ARTICLE XVII – Miscellaneous Provisions, PARAGRAPH 41 allows local government and public safety organizations to use this agreement to purchase Harris equipment and services. NDOT concurs and approves Carson City's request to purchase Harris equipment and services using our agreement.

I you need this approval on official letter head let me know.

Regards  
Jim

Jim Whalen | Technology Manager | Traffic Operations  
Nevada Dept of Transportation  
Office 775.888.7887  
Cell 775.901.0756  
[jwhalen@dot.nv.gov](mailto:jwhalen@dot.nv.gov)

Agreement Number P697-16-016

## SERVICE AGREEMENT

This Agreement, made and entered into on 09/13/2018, by and between the State of Nevada, acting by and through its Department of Transportation (hereinafter "DEPARTMENT") and HARRIS CORPORATION, a Delaware corporation, acting through its Communication Systems Segment, having its principal place of business at is 221 Jefferson Ridge Parkway, Lynchburg, VA 24501 (hereinafter "SERVICE PROVIDER"). Individually they are each a "Party" and collectively they are the "Parties."

### WITNESSETH:

WHEREAS, the Director of the DEPARTMENT may, pursuant to Nevada Revised Statutes (hereinafter "NRS") Chapter 333 and Chapter 408, contract for technical services that may be required; and

WHEREAS, NRS Chapter 333 authorizes heads of state departments to contract for the services of independent contractors; and

WHEREAS, the DEPARTMENT has determined that a provision of services is required for the Nevada Shared Radio System (hereinafter "NSRS") Replacement Project (hereinafter "PROJECT"), and as such this PROJECT is necessary to replace the existing NSRS with a Land Mobile Radio System capable of supporting Project 25 (P25) Phase 1 and P25 Phase 2 technologies to include, but not limited to, design, development, deployment, and migration to the new P25 system with minimal interruption of service to the existing mission-critical system. The DEPARTMENT is going to be using State funding for this PROJECT. In the event the DEPARTMENT elects to use Federal funding the Parties agree to amend this Agreement to accommodate additional Federal requirements; and

WHEREAS, the DEPARTMENT, Washoe County, Nevada, a political subdivision of the State of Nevada, and NV Energy, (each are individually a "NSRS Member" and collectively "NSRS Members") previously entered into that certain contract Nevada Shared Radio System Contract, dated as of May 9, 2017 (the "Member Agreement"), pursuant to which the NSRS Members issued a Request for Proposal entitled "REVISED REQUEST FOR PROPOSAL, 697-16-016, Project Specifications and Instructions for Submitting a Proposal to furnish Nevada Shared Radio Replacement Project" (collectively, the "RFP") requesting proposals to provide NSRS Members with a radio communications system and services ("Nevada Shared Radio System" or "NSRS") as set forth in the RFP; and

WHEREAS, the DEPARTMENT has selected SERVICE PROVIDER's Proposal and now desires to enter into this Agreement with SERVICE PROVIDER to provide the DEPARTMENT with the radio communications system and services that the DEPARTMENT requires supporting its obligations under the Member Agreement and as set forth in the Scope of Services attached to this Agreement as Attachment A; and

WHEREAS, the NSRS, when fully implemented for each NSRS Member, will incorporate sub-systems for each NSRS Member, while together operating as an integrated statewide communication system providing communication for all NSRS Members. The NSRS, as designed by SERVICE PROVIDER, will only operate as an integrated statewide communication system when all NSRS Members have contracted with SERVICE PROVIDER to provide each NSRS Members' sub-system of the total system (hereinafter "Shared Regional Implementation"). The NSRS will be implemented for all NSRS Members simultaneously on a regional basis as set forth in the Scope of Services attached to this Agreement as Attachment A; and

WHEREAS, SERVICE PROVIDER's services will be of great benefit to the DEPARTMENT and to the people of the State of Nevada.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is agreed by and between the Parties as follows:

**DEFINITIONS:**

As used herein, the terms set forth below shall have meanings set forth below.

- A. "Acceptance Tests" shall mean the testing procedures attached to the Scope of Services and mutually agreed upon by the DEPARTMENT and SERVICE PROVIDER to be performed to determine whether the System has met the acceptance criteria either set forth in the Scope of Services, incorporated herein as Attachment A or as mutually agreed upon writing by the DEPARTMENT and SERVICE PROVIDER.
- B. "Certificate of Insurance" shall mean the certificate to be provided by SERVICE PROVIDER evidencing the insurance coverage of SERVICE PROVIDER as specified in Article XVII, paragraphs 7-10.
- C. "Change Order" shall mean a written modification to the Total Agreement Price, Project Schedule or other Agreement terms, which is signed by both Parties.
- D. "DEPARTMENT Encumbered Contract Value" shall mean the Total Agreement Price, including contingency funds as defined in ARTICLE XV, paragraph 7, at Agreement execution or as subsequently modified by a written amendment to this Agreement.
- E. "Detailed Design Documents" shall mean those documents deliverable by SERVICE PROVIDER to the DEPARTMENT at the conclusion of the Detailed Design Review described in Article II, paragraph 23 of this Agreement.
- F. "Detailed Design Review" or "DDR" shall have the meaning given in Article II, paragraph 23 of this Agreement.
- G. "Documentation Deliverables" shall mean the standard commercial quality manuals to be furnished by the SERVICE PROVIDER to the DEPARTMENT pursuant to the terms set forth in Attachment A Scope of Services.
- H. "Effective Date of the Agreement" or "Execution Date" shall be the date inserted on the first page of the Agreement.
- I. "Expiration Date" shall mean the date on which the Term of this Agreement shall end which shall be the end of the Warranty Period (as defined in Article IX Warranty) except that some other sections of this Agreement may have a later end date for such section when another date is specifically provided in those sections of this Agreement.
- J. "Final System Acceptance" shall mean the Final Acceptance for the NSRS pursuant to Article VI, paragraph 5.
- K. "Hardware" shall mean, collectively, the Terminal Hardware and Infrastructure Hardware, as defined below.

- L. "Infrastructure Hardware" shall mean the equipment, goods, and materials to be supplied by SERVICE PROVIDER for the System infrastructure, as further described in Attachment A Scope of Services.
- M. "Project Kick-Off Meeting" shall have the meaning given in Article II, paragraph 20 of this Agreement.
- N. "Project Manager" shall mean each respective Party's duly authorized representative designated to manage each Party's PROJECT obligations.
- O. "Project Schedule" shall mean the schedule attached to the Scope of Services or otherwise mutually agreed upon by SERVICE PROVIDER and the DEPARTMENT in writing for the delivery of the Hardware and/or Software and the performance of the Services described in Attachment A Scope of Services.
- P. "Project Sites" shall mean those sites where any construction work is performed or any Infrastructure Hardware is installed under the terms of this Agreement. The term "Project Sites" will include all of the Tower Sites (as defined below).
- Q. "Responsibility Matrix" shall mean the table included in Attachment A Scope of Services Exhibit 3 which depicts the roles and responsibilities of SERVICE PROVIDER and the DEPARTMENT set forth in this Agreement.
- R. "RFP" shall mean the DEPARTMENT's Request for Proposal as described in the recitals of this Agreement.
- S. "Services" or "Work" shall mean the services and work to be provided by SERVICE PROVIDER to the DEPARTMENT included in Attachment A Scope of Services.
- T. "Software" shall mean the proprietary computer software of SERVICE PROVIDER as owned exclusively by SERVICE PROVIDER or SERVICE PROVIDER's suppliers, as appropriate, and as further defined in and licensed to the DEPARTMENT pursuant to the terms of the Software License Agreement, incorporated here in as Attachment B.
- U. "Software License Agreement" shall mean the System Software License Agreement set forth in Attachment B.
- V. "Statement of Work" shall mean the description of the work to be performed by SERVICE PROVIDER to deliver the Hardware, install the System, and provide the Services, all as described in Attachment A.
- W. "System" shall mean the radio communications system comprised of the Hardware and Software to be furnished by SERVICE PROVIDER to the DEPARTMENT pursuant to the terms set forth in Attachment A.
- X. "Terminal Hardware" shall mean mobile units, portable units, control stations, and related accessories to be provided by SERVICE PROVIDER as listed in Attachment A.
- Y. "Total Agreement Price" shall mean the price of the Hardware, the Software license, and the Services to be furnished by SERVICE PROVIDER to the DEPARTMENT pursuant to Article XV, paragraph 2, of this Agreement. The Total Agreement Price may either increase or decrease with the issuance of a Change Order. The Total Agreement Price at Agreement execution does not include contingency funds as defined in ARTICLE XV, paragraph 6.

- Z. "Tower Sites" shall mean those sites where equipment will be installed on existing or new towers as included in the SERVICE PROVIDER's Proposal and to be finalized in the Detailed Design Documents or subsequent Change Orders.

#### ARTICLE I - SCOPE OF SERVICES

1. The SERVICE PROVIDER agrees perform services listed in Attachment A Scope of Services attached hereto and incorporated herein.
2. The SERVICE PROVIDER agrees to furnish all labor, materials, services, equipment, tools, deliver and install the Hardware and Software for the System, and provide the Documentation Deliverables to perform the professional services required under the terms of this Agreement, with the provisions of Attachment A Scope of Services, except as specifically provided otherwise herein.
3. The Detailed Design Documents, as described in Article II, paragraph 23, of this Agreement, and as amended from time to time in writing by the Parties, shall be incorporated into this Agreement after the Detailed Design Documents are approved by the DEPARTMENT and thereafter shall supersede any contrary provisions in Attachment A unless a Change Order specifically modifies any requirement.
4. SERVICE PROVIDER shall commence, carry on, and complete its obligations under this Agreement with all deliberate speed in accordance with the dates set forth in Article II, paragraph 25 Project Schedule and in a sound, economical, and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, SERVICE PROVIDER agrees to cooperate with the various departments, agencies, employees, and officers of the DEPARTMENT.
5. SERVICE PROVIDER agrees to secure at SERVICE PROVIDER's own expense all personnel necessary to carry out SERVICE PROVIDER's obligations under this Agreement. Such personnel shall not be deemed to be employees of the DEPARTMENT nor shall they or any of them have, or be deemed to have, any direct contractual relationship with the DEPARTMENT. SERVICE PROVIDER expressly understands and agrees that the SERVICE PROVIDER is, and shall in all respects be considered, an independent contractor.

#### ARTICLE II - PERFORMANCE

1. The term of this Agreement shall commence upon the Effective Date and shall terminate five (5) years from the date of FINAL SYSTEM ACCEPTANCE, unless a change extending the term is further agreed to by written amendment signed by all parties to this Agreement and approved by appropriate official action of the governing body of the DEPARTMENT prior to such term expiration date.
2. In the event that the SERVICE PROVIDER performs or causes to be performed any work after: (a) the Agreement's expiration date as set forth within this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date; or (b) termination of this Agreement prior to the expiration date set forth within this Agreement; then the DEPARTMENT shall make no payment for work performed following the expiration or termination dates, and the SERVICE PROVIDER shall forfeit any and all right to payment for such work.
3. The SERVICE PROVIDER, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and



forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the SERVICE PROVIDER's provision of services and work performed following termination of this Agreement, and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

4. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The SERVICE PROVIDER shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including but not limited representations relating to the extension of the Agreement's expiration date.

5. Paragraphs 1 through 5 of this Article II - Performance, shall survive the termination and expiration of this Agreement.

6. The SERVICE PROVIDER shall not proceed with work until the SERVICE PROVIDER receives a written "Notice to Proceed" from the DEPARTMENT. If the SERVICE PROVIDER does commence said work prior to receiving said Notice to Proceed, the SERVICE PROVIDER shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the SERVICE PROVIDER shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations and warranties made by the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to receipt of the Notice to Proceed. In the event the SERVICE PROVIDER violates the provisions of this Section, the SERVICE PROVIDER waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement.

The service provider must verify that facilities, infrastructure, and all pre-installation requirements are met prior to mobilization, implementation, and installation of the new P25 system.

7. SERVICE PROVIDER agrees to be subject to liquidated damages for failure to achieve Regional Acceptance in any NSRS Region by the date set forth in this Agreement or a change to the Regional Acceptance Date set forth in any revision to the project schedule, (described in Exhibit 6 Project Schedule), and further agrees that such liquidated damages are intended to be compensatory and do not constitute a penalty for late delivery. The Parties acknowledge and agree that the harm suffered by reason of a failure to achieve a Regional Acceptance by the date set forth in this Agreement would be difficult or impossible to calculate with any certainty and that the liquidated damages set forth below represent a reasonable estimate of that harm. The liquidated damages set forth below are specifically applicable to a failure to obtain Regional Acceptance by the dates set forth in this Agreement only. DEPARTMENT's rights and remedies for other than late delivery are set forth in this Agreement and as are otherwise available at law or equity. If SERVICE PROVIDER fails to meet the schedule date for Regional Acceptance set forth in this Agreement, and after written notice from DEPARTMENT and after thirty (30) calendar day opportunity to cure, the DEPARTMENT may

assess Liquidated Damages against SERVICE PROVIDER as defined below:

i. Damages amount per day  $((.005) \times (\text{SERVICE PROVIDER's contracted Total Agreement Price of effected NSRS Region})) / 60$ .

ii. In no event shall the maximum amount of liquidated damages assessed against SERVICE PROVIDER for late deliveries under this Agreement exceed one half of one percent (.005 %) of the Total Agreement Price as agreed to in Article XV, paragraph 2.

iii. Notwithstanding the above, should the Project Schedule change due to a Change Order under this Agreement, the Project Scheduled date for Regional Acceptance may be extended to meet project requirements as mutually agreed by both Parties.

iv. If one of the NSRS Members causes a delay to the schedule, SERVICE PROVIDER agrees to collaboratively draft a Change Order with the other NSRS Members and SERVICE PROVIDER to continue the NSRS Regional Implementation. Such Change Order shall address any design and project schedule changes needed to effectively partially implement the NSRS Region. The NSRS Member causing the delay shall reimburse SERVICE PROVIDER through such Change Order for any costs including, but not limited to, redesign, remobilization, retesting or any re-execution of any activities defined in the Scope of Work in an NSRS Region where the delay occurred completing the NSRS Region's implementation for SERVICE PROVIDER at a later date. A delayed NSRS Region under this section shall not be subject to future Liquidated Damages. However, in the event that a subsequent revised schedule date is set in an approved Change Order and SERVICE PROVIDER fails to meet such date, it shall be subject to liquidated damages pursuant to this Paragraph 7.

v. SERVICE PROVIDER shall have no liability for liquidated damages for any delay in achieving Regional Acceptance, if, after the Regional Acceptance Date, the delay is attributable to reasons other than SERVICE PROVIDER's delay, including but not limited to delay by NSRS Members and the DEPARTMENT's other service providers, FORCE MAJEURE EVENTS OR OTHER EVENTS BEYOND SERVICE PROVIDER'S REASONABLE CONTROL. However, in the event that a subsequent revised schedule date is set in an approved Change Order and SERVICE PROVIDER fails to meet such date, it shall be subject to liquidated damages pursuant to this Paragraph 7.

8. In the event the DEPARTMENT discovers a SERVICE PROVIDER's error or omission before its discovery by the SERVICE PROVIDER, the DEPARTMENT shall not unreasonably delay in notifying SERVICE PROVIDER of such error or omission. DEPARTMENT's notice to SERVICE PROVIDER shall specify a mutually agreed upon reasonable time period SERVICE PROVIDER will be allowed for correction. The SERVICE PROVIDER shall make all necessary corrections resulting from its errors and omissions, and shall without delay make any corrections necessitated by the negligence, lack of adequate resources, or any other cause within the SERVICE PROVIDER's control, and shall make such corrections without additional compensation. SERVICE PROVIDER shall track all related costs for the correction. Acceptance of the professional services by the DEPARTMENT will not relieve the SERVICE PROVIDER of the responsibility for any subsequent correction of any such errors and omissions, and the clarification of any ambiguities. The SERVICE PROVIDER will be responsible for additional costs in subsequent related construction resulting from its errors or omissions. Should the DEPARTMENT use its own personnel, supplies, or equipment to remedy the deficiency, all such costs incurred by the DEPARTMENT shall be deducted from the sum due or which may become due to the SERVICE PROVIDER. In the event all such costs and charges incurred by the DEPARTMENT exceed the sum which would have been payable under

this Agreement, then the SERVICE PROVIDER shall reimburse the DEPARTMENT the amount of said excess.

9. The SERVICE PROVIDER shall assign one (1) individual throughout the life of this Agreement who shall have overall PROJECT responsibility unless illness or termination requires replacement.

10. A key person is defined as any individual identified by the SERVICE PROVIDER in its proposal as being part of the team to be assigned to the PROJECT. The SERVICE PROVIDER acknowledges and agrees, that the award of this Agreement was based, in part, on its ability to manage the PROJECT, and the qualifications, experience, and capacity of the SERVICE PROVIDER's aforementioned key persons and team. The SERVICE PROVIDER represents, warrants, and covenants that such key persons are and will continue to be available to undertake and perform all services identified herein and fulfill the roles identified in its proposal. The SERVICE PROVIDER shall notify the DEPARTMENT in writing within ten (10) calendar days when a key person leaves the PROJECT team.

a. If a key person leaves the PROJECT team, the SERVICE PROVIDER shall promptly propose a replacement within thirty (30) calendar days to and for the DEPARTMENT's review and written consent.

b. The SERVICE PROVIDER will be deemed to be in breach of this Agreement:

1. If a key person leaves the PROJECT team for a reason other than death, retirement, incapacitation, or leaving SERVICE PROVIDER's employment (including the employment with SERVICE PROVIDER's affiliates, subsidiaries, and parent companies/organizations);

2. If a key person listed by the SERVICE PROVIDER in its proposal to perform or supervise various aspects of design is changed or leaves the PROJECT team.

11. The SERVICE PROVIDER shall at all times maintain control over and have complete responsibility for all services performed pursuant to this Agreement by the SERVICE PROVIDER and any of its subcontractors.

12. The SERVICE PROVIDER warrants that all deliverables and professional services produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry. The standard of care applicable to SERVICE PROVIDER's services will be of the degree of skill and diligence normally employed by service providers performing the same or similar services at the time said services are performed.

13. This Agreement, and any amendments, may be suspended temporarily, either wholly or in part, by the DEPARTMENT upon oral notice confirmed in writing within ten (10) calendar days, when the DEPARTMENT determines that conditions beyond the control of the SERVICE PROVIDER are unfavorable to its satisfactory continuation of work. Should such conditions be encountered, the time for completion may be extended in an amount determined by the DEPARTMENT to be equivalent to the delay. Requests for suspension of time by the SERVICE PROVIDER must have the written approval of the DEPARTMENT. No allowance shall be made for delay or suspension of the services solely due to the fault of the SERVICE PROVIDER.

14. An alteration ordered by the DEPARTMENT which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra professional services, and shall be specified in a written amendment signed by all Parties, which

P697-16-016

will set forth the nature and scope thereof. The method of payment for extra professional services shall be specified at the time the amendment is written.

15. The SERVICE PROVIDER shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of the DEPARTMENT through the Subcontractor/Service Provider Request process. The SERVICE PROVIDER will be responsible for any costs or deficiencies resulting from noncompliance of the subcontractors. Any attempted assignment of rights or delegation of duties under this Agreement without the prior written consent of the DEPARTMENT, shall be void.

16. This Agreement shall not become effective until and unless approved by the State Transportation Board.

17. This Agreement is contingent upon the verification that the SERVICE PROVIDER has a valid and active Nevada Business License, and is in good standing in all areas of the Secretary of State's business requirements. If the SERVICE PROVIDER is an out of state provider, the SERVICE PROVIDER must be registered as a foreign business entity equivalent in Nevada, in active status and in good standing.

18. Project Managers. SERVICE PROVIDER shall designate a Project Manager who will lead the SERVICE PROVIDER's team for the System installation project and other Services and Work described in this Agreement (the "PROJECT") and will serve as the DEPARTMENT's primary point-of-contact for SERVICE PROVIDER's project team and the official liaison between SERVICE PROVIDER's project team and the DEPARTMENT. The DEPARTMENT shall designate a Project Manager to function as the single point-of-contact and official liaison between SERVICE PROVIDER's Project Manager and the DEPARTMENT.

19. Project Completion Dates. The Project completion dates are described in the schedule included in Attachment A Scope of Services Exhibit 4 Project Schedule. The Project Schedule may only be modified by mutual written approval of the Parties or as otherwise provided in this Agreement.

20. Project Kick-off Meeting. Promptly after the Effective Date of the Agreement, the SERVICE PROVIDER's Project Manager shall schedule a Project Kick-Off Meeting, the timing and location of which will be mutually agreed upon by SERVICE PROVIDER and the DEPARTMENT. The objectives of this meeting include introduction of all project participants, review of the roles of the project participants, review of the overall project scope and objectives, review of the resource and scheduling requirements, and review of current site status.

21. Site Visits. All existing towers, shelters, and associated equipment provided by or mandated by the DEPARTMENT shall be satisfactory in all manners to accommodate the System proposed by the SERVICE PROVIDER. Following the Effective Date of the Agreement, the DEPARTMENT shall provide SERVICE PROVIDER with access to all Project Sites upon reasonable notice to allow SERVICE PROVIDER to thoroughly examine each Site and to perform the Detailed Design Review, to prepare a schedule of preparatory work required for each site, and prepare a timeline for completion of the preparatory work at each site. At the conclusion of the Site Visits and associated Site surveys and before the conclusion of the Detailed Design Review, DEPARTMENT and SERVICE PROVIDER will mutually agree on any Site work that DEPARTMENT will undertake and be responsible for under this Agreement. Both parties agree to update the contractual documentation reflecting the division of labor between the parties, if any, as it relates to the Sites. The associated funds for any site work not performed by SERVICE PROVIDER will not be paid to SERVICE PROVIDER. Any change of site work from SERVICE PROVIDER to the DEPARTMENT will be reflected in a deductive Change Order.

22. Construction Management Services, Site Preparatory Work. SERVICE PROVIDER shall perform the civil construction services set forth in Attachment A Scope of Services and Exhibit 3 Responsibility Matrix including, but not limited to, the site improvement civil construction to be performed at the identified sites. The DEPARTMENT shall identify and disclose to SERVICE PROVIDER any and all problems or conditions at all Project Sites of which the DEPARTMENT is aware that may affect the Work to be performed by SERVICE PROVIDER under this Agreement.

23. Detailed Design Review. The Detailed Design Review ("DDR") phase will commence after the Effective Date of this Agreement and conclude at a mutually acceptable time to maintain adherence to the Project Schedule. During the DDR, SERVICE PROVIDER's Project Manager will meet with the DEPARTMENT's project team on one (1) or multiple occasions to review the system design, technical data, and site-specific information to confirm and to refine the System and Tower Sites. At the conclusion of the DDR, SERVICE PROVIDER will provide the DEPARTMENT with the following documents (the "Detailed Design Documents") for review and approval by the DEPARTMENT:

- Final Siting Plans
- Project Schedule
- Engineered Site plans (sufficient for the DEPARTMENT to obtain required zoning approvals) and construction drawings for each site
- Shelter Floor Plan Drawings
- Rack Elevation Drawings
- System Block and Level Diagrams
- Power and HVAC Loads
- Antenna Network Diagrams
- Site Frequency Plans (including spectrum analysis and intermodulation studies of existing and proposed frequencies at each site)
- TX Combiner Plan by Site
- Network Backhaul Plans
- Any other documents as mutually agreed upon by the Parties

24. The DEPARTMENT shall have twenty (20) business days to conduct its review of the above documents. Approval of Detailed Design Documents by the DEPARTMENT shall not be unreasonably withheld, conditioned or delayed.

25. Project Schedule. The Project Schedule for the Work is included in Attachment A Scope of Services Exhibit 4 Project Schedule. Updates to the start dates and durations will be made as the information evolves and will be mutually agreed upon by both Parties or updated as otherwise provided herein.

26. System Implementation Communications. SERVICE PROVIDER and the DEPARTMENT shall jointly establish a plan that defines regular meetings, reporting structure, and other communications activities, including working sessions that may be needed throughout the term of this Agreement to plan sub-tasks, including at a minimum: (a) one (1) or more DDR meetings to communicate the final engineering design; (b) formal monthly written reports to the DEPARTMENT's Project Manager concerning work in progress and accomplishments; (c) periodic status meetings at which the parties' Project Managers and other project participants will provide updates; (d) conference calls with SERVICE PROVIDER's and the DEPARTMENT's project teams to discuss tasks, assign responsibility, and establish schedules; and (e) workshops or working sessions that may be needed throughout the Project to plan subtasks.

27. DEPARTMENT Approvals. The DEPARTMENT will review and respond with reasonable promptness to all submittals or other items requiring its approval under this Agreement. For all such submittals or other items the DEPARTMENT will provide the SERVICE PROVIDER with either (i) written notification of the DEPARTMENT's approval, or (ii) a written

notification of conditional approval subject to SERVICE PROVIDER providing prompt correction of any noted deficiency, or (iii) in the case of a submittal that does not meet the requirements of the Agreement, a written notification of the DEPARTMENT's disapproval. The DEPARTMENT's disapproval notification will be provided with reasonable detail to sufficiently advise SERVICE PROVIDER of the basis on which the submittal was determined to be unacceptable. The DEPARTMENT agrees that, except as otherwise provided, failure to provide approval, conditional approval or non-approval of a submittal for which its approval is required within fifteen (15) working days of receipt of the submittal from the SERVICE PROVIDER shall constitute approval of the submittal. The parties agree that this section, article II Performance, does not relate to the Testing and Acceptance procedures in the Regional Testing and Acceptance section of this Agreement.

### ARTICLE III - OBLIGATIONS FOR SYSTEM IMPLEMENTATION

The following subsections apply to the Work to be performed under this Agreement.

1. **Project Management and Implementation Plan.** The DEPARTMENT and SERVICE PROVIDER each agree to perform their respective tasks and obligations pertaining to permits and licenses, Project Site surveys, general Project Site-related responsibilities, general Hardware-related responsibilities, and Project Site-specific responsibilities as set forth in the Scope of Services. The DEPARTMENT's obligations set forth in the Scope of Services shall be performed by the DEPARTMENT in a timely and proper fashion in accordance with the Project Schedule, or as otherwise agreed upon by the DEPARTMENT and SERVICE PROVIDER to allow SERVICE PROVIDER to timely perform its obligations under this Agreement.

2. **Access.** The DEPARTMENT shall provide access, at no cost to SERVICE PROVIDER, to all owned, leased, or licensed Project Sites at reasonable times, and with an escort (if required), at no charge, upon reasonable prior notification from SERVICE PROVIDER. The DEPARTMENT shall ensure sufficient room, within reason, for construction vehicles used by SERVICE PROVIDER. The DEPARTMENT shall issue temporary identification cards to SERVICE PROVIDER's personnel and its authorized subcontractors, if required, for access to any of the Project Sites. SERVICE PROVIDER accessing State sensitive facilities unescorted must comply with State Information Security Policies Control Number 105 (Personnel Security) and 106 (Physical Security and Environmental Controls). The DEPARTMENT does not have the resources to escort personnel every day. All communications facilities are considered sensitive areas as they have connectivity to federal and state information systems such as the National Crime Information Center (NCIC) and the Nevada Criminal Justice Information System (NCJIS). SERVICE PROVIDER is required to conduct a background investigation and receive approval from the DEPARTMENT's Information Security Officer for all SERVICE PROVIDER personnel accessing State sensitive facilities. Only personnel who are approved by the DEPARTMENT's Information Security Officer who have completed approved background checks, per Attachment C, may access sites.

3. **Changes in Sites.** Any sites where SERVICE PROVIDER will operate and perform System installation under the terms of this Agreement must be approved by the DEPARTMENT, which approval shall not be unreasonably withheld, delayed or conditioned. Should the DEPARTMENT direct an addition to, removal from, or modification of the list of sites as detailed in this Agreement that affects SERVICE PROVIDER's cost or schedule or System performance, including, but not limited to, coverage, the Parties agree that such change shall entitle SERVICE PROVIDER to a Change Order and each Party shall attempt, in good faith, to fully negotiate and execute such Change Order prior to commencement of the Work at the changed site.

4. **Preparatory Work on Sites.** Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that some Project Sites may require tower replacement or

modifications, as well as related permitting and licensing for Work and/or obtaining physical real estate space. As stated in the Responsibility Matrix, the DEPARTMENT shall be responsible for securing all necessary site zoning, site access, or other permits (including, but not limited to, easements, impact studies, planning commission approval, variances, etc.) necessary for the Work, whether required by federal, state, or local authorities, with SERVICE PROVIDER assisting by providing information and any required civil engineering drawings. The DEPARTMENT shall also have the responsibility to secure by lease, purchase, easement or otherwise all rights and access to selected sites or additional real estate as may be required. The DEPARTMENT also shall be responsible for paying all utility charges to the appropriate utility for providing utility services to the System installation areas. The Parties agree to mitigate the need for tower replacement or modification to the extent practical. If any unanticipated tower replacements become necessary, SERVICE PROVIDER is entitled to an extension of time for any impacted activities and/or an equitable adjustment to the Total Agreement Price to maintain the Project Schedule.

5. Frequency FCC Licensing. The DEPARTMENT will be responsible for obtaining all Federal Communications Commission (FCC) frequency licenses for the System, with SERVICE PROVIDER providing technical assistance and information as set forth in Attachment A. SERVICE PROVIDER has no responsibility or obligation to secure licensed frequencies. In the event the DEPARTMENT fails to obtain FCC licenses, and such failure has a material impact on the cost of Work performed by SERVICE PROVIDER under the Agreement and/or the schedule, the Parties agree that SERVICE PROVIDER shall be entitled to an equitable adjustment to the Project Schedule, Total Agreement Price, or other Agreement terms and that a Change Order shall be agreed to by the Parties.

6. Federal Aviation Administration (FAA) Approvals. The DEPARTMENT will be responsible for obtaining all FAA approvals for newly-constructed or modified towers.

7. Contractor Licenses. SERVICE PROVIDER will be responsible for obtaining all contractor licenses required for the performance of its duties and obligations.

#### ARTICLE IV - DELIVERY, TITLE AND RISK OF LOSS

1. Infrastructure Hardware. SERVICE PROVIDER shall ship the Infrastructure Hardware to the DEPARTMENT at the DEPARTMENT's expense on or before the dates set forth in the Project Schedule. Partial deliveries shall be permitted. Upon delivery to the first carrier, title to each portion of the Hardware and all risk of loss or damage shall pass to the DEPARTMENT. Infrastructure Hardware may be shipped directly to the DEPARTMENT or to a mutually agreed upon staging or storage location. As the DEPARTMENT is self-insured, it shall keep the Hardware secure and fully insured for the total amount of all monies then due for the respective Hardware, or yet to become due, to SERVICE PROVIDER with respect to this Agreement.

2. Terminal Hardware. SERVICE PROVIDER shall ship the Terminal Hardware to the DEPARTMENT at the DEPARTMENT's expense on or before the dates set forth in the Project Schedule. Partial deliveries shall be permitted. Upon delivery to the first carrier, title to each portion of the Hardware and all risk of loss or damage shall pass to the DEPARTMENT.

3. If the DEPARTMENT fails to take delivery of any of the Hardware, SERVICE PROVIDER may place such Hardware in storage at the place of manufacture or elsewhere. In such event: (1) SERVICE PROVIDER shall notify the DEPARTMENT of the placement of any Hardware in storage; (2) SERVICE PROVIDER's delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to the DEPARTMENT; (3) any amounts otherwise payable to SERVICE PROVIDER upon delivery shall be payable upon presentation of SERVICE PROVIDER's invoices therefor; and (4) promptly upon submission of

P697-16-016

SERVICE PROVIDER's invoices therefor, the DEPARTMENT shall reimburse SERVICE PROVIDER for all expenses incurred by SERVICE PROVIDER, such as preparation for and placement into storage, handling, storage, demurrage, inspection, preservation, and insurance.

#### ARTICLE V - CHANGES AND ADDITIONS

The following sections pertain to the Change Order Policy as identified herein, and as attached in Attachment D Change Order Policy.

1. **Hardware Changes.** In the event of any change in the Hardware as a result of the imposition after the Effective Date of this Agreement of any requirements by any federal, state, or local government, an equitable adjustment in the price shall be made to reflect any added cost and expense of such change, and this Agreement shall be modified in writing accordingly.

2. **DEPARTMENT Requested Changes.** The DEPARTMENT may request changes in or additions to the Work or in the time or place of performance of the Work under this Agreement. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Agreement, SERVICE PROVIDER shall be entitled to an equitable adjustment, by Change Order, in the Total Agreement Price, the Project Schedule, or both. Any such adjustment in the Total Agreement Price or Project Schedule shall be mutually satisfactory to the DEPARTMENT and SERVICE PROVIDER. Price increases and/or extensions of time shall not be binding upon either Party unless and until evidenced by a Change Order signed by the Parties hereto.

3. **DEPARTMENT Delays in Performance.** To the extent that the DEPARTMENT fails to timely perform its obligations under the Responsibility Matrix or otherwise under this Agreement, and such failure has a material impact on the cost of Work performed by SERVICE PROVIDER under this Agreement and/or the schedule, the Parties agree that SERVICE PROVIDER shall be entitled to an equitable adjustment to the Project Schedule, the Total Agreement Price, or both and that a Change Order shall be agreed to by the Parties.

4. **Concealed Conditions.** If, following the DEPARTMENT's acceptance of the Detailed Design Documents, SERVICE PROVIDER encounters a concealed condition of which it had no reason to be aware, at one (1) or more Project Sites, then the Parties agree to work together to determine the best course of action and agree to negotiate in good faith a Change Order and an equitable adjustment to the Project Schedule and/or Total Agreement Price.

5. **Product Discontinuance.** Subject to its obligation to fulfill its obligations set forth in the Agreement, SERVICE PROVIDER reserves the right to change or to discontinue any product covered by this Agreement provided that SERVICE PROVIDER agrees to make available to the DEPARTMENT a functionally equivalent replacement product equal to or better than the product discontinued.

6. **Frequency Support and Frequency Changes.** SERVICE PROVIDER shall reasonably support the DEPARTMENT in submitting the DEPARTMENT's frequency licensing applications to the Regional authorities and the Federal Communications Commission for this PROJECT. In the event that, after all commercially reasonable efforts and due diligence have been expended, the DEPARTMENT cannot obtain all of the necessary United States government approvals for the frequency plan as described in Attachment A and this Agreement, it shall be treated as an excusable delay event pursuant to the Excusable Delays section of this Agreement for which an extension to the Project Schedule shall be granted, and SERVICE PROVIDER will diligently and expeditiously prepare and provide to the DEPARTMENT a System re-design for its review and approval, including all price and schedule changes. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that SERVICE PROVIDER may be entitled to an equitable adjustment to the Total Agreement Price and/or the



Project Schedule for SERVICE PROVIDER's services on any such System re-design. In the event that the DEPARTMENT and SERVICE PROVIDER cannot mutually agree on the System re-design, either party may then terminate this Agreement on thirty (30) calendar days written notice to the other Party.

7. The Parties agree that a Change Order may alter or modify the terms of this Agreement and shall have the same effect as an amendment to this Agreement. However, increases to the DEPARTMENT Encumbered Contract Value must be processed through a written amendment to this Agreement. Such Change Order shall specify which terms and conditions have been modified throughout the Agreement where applicable. The Parties agree that any and all defined words or phrases in the Agreement will apply equally throughout any Change Order or amendment. The terms set forth in this Agreement shall remain in full force and effect unless altered by a Change Order or amendment.

## ARTICLE VI - TESTING AND ACCEPTANCE

1. NSRS Regional Implementation: An NSRS Region means those three (3) divisions as defined in Figure 1 - NSRS Regional Map, contained in Exhibit 10 Project Implementation Plan ("NSRS Region"). Each NSRS Region will be implemented simultaneously for each NSRS Member. The DEPARTMENT and SERVICE PROVIDER agree that the Project will begin by performing the System Implementation project tasks on an NSRS Region by NSRS Region Basis at the direction of the NSRS Members. The Infrastructure Hardware and associated Software for each NSRS Region shall meet the requirements for the Factory Testing Phase defined below prior to the shipment of the hardware. The DEPARTMENT, other NSRS Members and SERVICE PROVIDER will have developed and agreed upon an Acceptance Testing Plan for each NSRS Region by the end of the Detailed Design phase of the Project.

2. The Factory Testing Phase: For each NSRS Region, the Factory Testing Phase, NSRS Members and SERVICE PROVIDER shall approve a Factory Acceptance Test Plan ("FATP"), which shall include visual inspections, verification of electrical parameters of the Hardware and associated Software, functional tests, system resiliency, and other aspects of the Hardware and associated Software or systems, conducted in accordance with standards of good engineering practice and including such other quality control and product approval procedures as the manufacturer normally conducts on such Hardware and associated Software, to determine whether the Hardware and associated Software meets its Specifications according to the FATP. For each NSRS Region, the Factory Test Phase shall be conducted by SERVICE PROVIDER and observed by the DEPARTMENT on Hardware it manufactures in addition to third party products in the design. Such processes and results of such tests shall be documented and the documentation for each piece of Hardware and associated Software shall be provided to the DEPARTMENT and NSRS Members within fourteen (14) calendar days of the date the Hardware is shipped to Nevada. The presentation of such documentation by SERVICE PROVIDER or SERVICE PROVIDER's supplier to the DEPARTMENT shall constitute SERVICE PROVIDER's representation that the statements in the documents are true and correct, and that the factory testing and acceptance according to the FATP for such Hardware and associated Software have been met. The shipment of Hardware for installation shall also constitute SERVICE PROVIDER's representation that the FATP for such Hardware and associated Software have been met. No Hardware shall be shipped or installed before it has met the FATP. NSRS Members and SERVICE PROVIDER shall jointly commence the Acceptance Tests on a mutually agreeable date and a representative of SERVICE PROVIDER and a representative of each NSRS Member shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed.

3. Regional Acceptance Testing: SERVICE PROVIDER shall notify the DEPARTMENT and the other NSRS Members that an NSRS Region is ready for Acceptance Tests at least fifteen (15) working days before commencement of the Acceptance Tests. Acceptance Testing is defined as set out in Exhibit 8 Functional Acceptance Test Procedures,

P697-16-016

and Exhibit 9 Coverage Character Test Procedures, and shall include such other tests and procedures as the DEPARTMENT or other NSRS Members may reasonably request during the development of the Acceptance Testing Plan during the Detailed Design Phase of the project. NSRS Members and SERVICE PROVIDER shall jointly commence the Acceptance Tests on a mutually agreeable date and a representative of SERVICE PROVIDER and a representative of each NSRS Member shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed. If the NSRS Region does not fulfill the requirements of the Acceptance Tests, and the failure is solely attributable to SERVICE PROVIDER's obligations under this Agreement, SERVICE PROVIDER shall promptly correct the defects at no additional cost to the DEPARTMENT and other NSRS Members as needed. Upon correction of the defects the Acceptance Tests for the applicable part of the NSRS Region shall be repeated in accordance with the procedures set forth in this Section and the Acceptance Testing Plan. Successful completion of the Acceptance Tests for an NSRS Region is the sole criterion for technical NSRS Regional Acceptance ("Regional Acceptance") and the initiation of the Warranty Period, defined in Article XV Warranty, with respect to the NSRS Region. For avoidance of doubt, initially, the first NSRS Region will be implemented and tested. Next, the second NSRS Region will be implemented. During the testing of the second NSRS Implementation Region, the previously implemented NSRS region will be tested for integration. Next, the third NSRS Region will be implemented. During the testing of the third NSRS Implementation Region, the previously implemented NSRS regions will be tested for integration.

4. 30-Day Operational Burn-in Phase: The 30-Day Operational Burn-Test for each NSRS Region shall follow immediately after the successful completion of Regional Acceptance for each NSRS Region. During this time, representatives of SERVICE PROVIDER, the DEPARTMENT and other NSRS Members shall observe the test procedure as defined in Exhibit 8 Functional Acceptance Test Procedures. The 30-Day Operational Burn-in Phase will last for thirty (30) consecutive calendar days but shall run anew in the event of a Major Failure as defined in the Acceptance Test Plan, with the 30-day clock restarting after SERVICE PROVIDER has corrected the cause of the Major failure, which SERVICE PROVIDER shall correct at SERVICE PROVIDER's expense.

5. Final System Acceptance: Final Acceptance for the NSRS shall occur when (i) Regional Acceptance has occurred for each NSRS Region including the 30-Day Operational Burn-In Test, (ii) the Hardware and Software for the System, and Services have been furnished, delivered, installed, (iii) SERVICE PROVIDER has furnished the DEPARTMENT with all document deliverables, and (iv) SERVICE PROVIDER and the DEPARTMENT agree on a list of nonservice affecting defects in the appearance, operation or installation of the Hardware (the "Punch List") which SERVICE PROVIDER shall promptly resolve.

6. Preplanning Regional Acceptance Meeting: When the DEPARTMENT or any NSRS Member recognizes that they cannot meet a contractual obligation for performance under their respective Agreement with SERVICE PROVIDER, including but not limited to slippage in the Project Schedule, obligations under the Responsibility Matrix, or other material changes such that any region cannot be implemented per the Project Schedule, SERVICE PROVIDER and all NSRS Members shall meet to mutually agree on a Change Order. Such Change Order may affect the planned Coverage or other technical requirement for the NSRS region under implementation and may result in a modification to the Coverage Guarantee for that NSRS Region. The Change Order shall ensure the continuation of the implementation of the NSRS Region in a timely manner so as not to delay the overall implementation for all NSRS Members.

7. Notwithstanding the acceptance testing of the NSRS Regions set forth in Paragraph 3 of this Article VI, and the exclusion of the installation of the shared Connect Cores as defined in Exhibit 10 Project Implementation Plan, if the DEPARTMENT commences use of any portion of the System in an NSRS Region for its intended purpose, other than for the express purpose of training, testing, or Pre-acceptance Site Usages as mutually agreed upon by

SERVICE PROVIDER and the DEPARTMENT in writing, prior to Regional Acceptance of that NSRS Region, the applicable portion of the purchase price for that NSRS Region shall be due and payable and the NSRS Region will be deemed accepted. The Warranty Period for the applicable portion of the System put into use together with the associated installation Services shall be deemed to have commenced concurrently with the use of the applicable portion of the System for its intended purpose. The use of the applicable portion of the System for its intended purpose shall be deemed to have occurred when the DEPARTMENT commences to use and rely primarily on the applicable portion of the System for its communications.

8. Pre-acceptance Site Usage: Before Regional Acceptance has occurred in any Region, DEPARTMENT may begin using completed sites with written approval of SERVICE PROVIDER for DEPARTMENT defined pre-acceptance testing or non-critical communication needs during transitional period of implementation. DEPARTMENT acknowledges that before Regional Acceptance has occurred that the sites operating in such region are not fully operational as designed and that certain anomalies may occur including, but not limited to, occurrences of the following: dropped calls, unplanned system interruption, or variance in coverage from the guaranteed coverages in this Agreement. DEPARTMENT AGREES ONLY TO ALLOW NON-PUBLIC SAFETY USERS TO USE A SITE BEFORE REGIONAL ACCEPTANCE AND WILL NOT ALLOW PUBLIC SAFETY USERS OR FIRST RESPONDERS TO USE A SITE BEFORE REGIONAL ACCEPTANCE AND WILL NOT ALLOW ANY USE BEFORE REGIONAL ACCEPTANCE REQUIRING FAIL-SAFE, EMERGENCY OR MISSION CRITICAL PERFORMANCE IN WHICH THE FAILURE OF THE EQUIPMENT COULD LEAD TO DEATH, PERSONAL INJURY, PHYSICAL OR ENVIRONMENTAL DAMAGE. DEPARTMENT ACCEPTS ALL RESPONSIBILITY AND LIABILITY FOR RADIO SYSTEM USAGE BEFORE REGIONAL ACCEPTANCE. During any period in which Pre-acceptance Site Usage is granted by SERVICE PROVIDER to DEPARTMENT, DEPARTMENT acknowledges that SERVICE PROVIDER has no liability to keep sites operational and Coverage will not be guaranteed until Regional Acceptance is complete. Further, DEPARTMENT acknowledges that site or system outages will occur, and that SERVICE PROVIDER has no commitment to inform DEPARTMENT of any such outages, however if planned outages are expected SERVICE PROVIDER shall notify System Administrator twenty-four (24) hours in advance. To ensure the continuation of the implementation of the NSRS Region in a timely manner so as not to delay the overall implementation for all NSRS Members, SERVICE PROVIDER shall have no obligation to support users operating on any Pre-acceptance Site.

9. As used in this Agreement, the term "Regional Acceptance Date" shall mean the date of "Acceptance" of one (1) of the NSRS Regions, which shall be deemed to occur upon the earlier of: (1) the date on which the NSRS Region is deemed accepted pursuant to Paragraph 3 of this Article VI above, or (2) the date on which the Region is deemed accepted pursuant to Paragraph 7 of this Article VI above.

10. Commitments and Assumptions.

(i) SERVICE PROVIDER will provide a Testing Coordinator who will establish the approach, reasonably acceptable to the Parties, to measure, record, and report progress on all testing activities.

(ii) SERVICE PROVIDER will ensure the technical environment is set up to support each round of testing.

(iii) Testing activities for each portion of the PROJECT will be completed in accordance with the Acceptance Testing Plans.

(iv) SERVICE PROVIDER will promptly provide a written summary of each round of comprehensive Acceptance Testing.

(v) All Acceptance Testing will be performed by SERVICE PROVIDER with the cooperation and under the observation and supervision of the DEPARTMENT and other NSRS Members.

#### ARTICLE VII – SOFTWARE LICENSE

1. Subject to the terms and conditions of the Software License Agreement, incorporated herein as Attachment B, the DEPARTMENT is granted a license to use the Software only in conjunction with the System purchased under this Agreement. "Software" means the "Licensed Programs" as defined in Attachment B Software License Agreement.

#### ARTICLE VIII - COVERAGE

1. SERVICE PROVIDER's representations concerning the distance at which usable radio signals will be transmitted and received by Hardware supplied hereunder are set forth in the Attachment A. Coverage for the System shall be measured as provided in Article VI Testing and Acceptance.

#### ARTICLE IX – WARRANTY

##### 1. Hardware and Services

The warranties for the System, including all Services, Software and Hardware, set forth in this Agreement shall begin on the date of the first NSRS Regional Acceptance Date and continue for a period of one (1) year following Acceptance of the last NSRS Region implemented (the "Warranty Period"). SERVICE PROVIDER warrants for the Warranty Period, that the Hardware and installation Services furnished by SERVICE PROVIDER under this Agreement, and further specified in Exhibit 11 Warranty Plan, shall be new, free from defects in material and workmanship and shall conform to the Agreement specifications. Any Services provided during the Warranty Period are set forth in Attachment A. Any and all claims for breach of this warranty are conclusively deemed waived unless made within the Warranty Period. The warranty period for additional Hardware purchased by the DEPARTMENT from the SERVICE PROVIDER after System Acceptance shall be warranted for the following periods of time from the date the Hardware is delivered to DEPARTMENT:

- a. For mobile and portable radios ("Subscriber Units"), twenty-four (24) months.
- b. For all other Hardware, one (1) year.

2. Subscriber Units: Subscriber Unit warranty period shall begin at the date put into service and run for a period of twenty-four (24) months. Subscriber Unit accessories, including batteries, are warranted for a period of one (1) year. For purposes of this Warranty the Subscriber Unit's batteries supplied by SERVICE PROVIDER shall be deemed defective if: (1) the battery capacity is less than eighty percent (80%) of rated capacity, or (2) the battery develops leakage. Replacement batteries shall be warranted only for the remaining unexpired portion of the Warranty Period. This warranty becomes void if: (1) the battery has been subjected to any kind of misuse, detrimental exposure, or has been involved in an accident, or (2) the battery is used in equipment or service other than the Hardware for which it is specified.

3. During the Warranty Period if any component of the Hardware or portion of the installation Services fails to meet the foregoing warranties, SERVICE PROVIDER's sole obligation and DEPARTMENT's exclusive remedy under this warranty shall be the correction by SERVICE PROVIDER of the failure at SERVICE PROVIDER's option: (1) by repairing any defective component of the Hardware, or (2) by furnishing any necessary repaired or replacement parts, (3)

by the redoing of the faulty installation, or replacement per sections 4, 5, or 6 below. Any such failure, or the repair or replacement of the defective component or the redoing of any installation, shall not extend the Warranty Period. Where such failure cannot be corrected by SERVICE PROVIDER's reasonable efforts, the Parties will negotiate an equitable adjustment in price. SERVICE PROVIDER will be responsible for all charges incurred in returning defective parts to SERVICE PROVIDER's plant and shipping repaired or replacement parts to DEPARTMENT. All warranty labor must be performed by an authorized service group approved by SERVICE PROVIDER either at its place of business, for mobile or portable equipment, or at the DEPARTMENT's location for fixed location equipment should SERVICE PROVIDER determine that it is not feasible to return the fixed location equipment to SERVICE PROVIDER's authorized service group.

4. SERVICE PROVIDER Manufactured Infrastructure Equipment – Defects & Recurring Failures - Any SERVICE PROVIDER manufactured fixed equipment or SERVICE PROVIDER manufactured fixed equipment module that fails twice during the acceptance test or twice during the first twelve (12) months after System Acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the SERVICE PROVIDER and NSRS Members. If the defect is deemed by the NSRS Members and SERVICE PROVIDER to be systemic after the investigation is completed, the SERVICE PROVIDER shall then be responsible for replacing at no additional cost to the NSRS Members all components and/or equipment that is deemed to be causing the systemic failure.

If, during the first five (5) years after Final System Acceptance, ten percent (10%) of a single type of SERVICE PROVIDER manufactured component, equipment or material fails, an investigation by the SERVICE PROVIDER and NSRS Members will be performed on any such failed component, equipment or material. If such failure is deemed by NSRS Members and SERVICE PROVIDER to be due to a product defect, SERVICE PROVIDER shall replace one hundred percent (100%) of this type of component, equipment or material NSRS-wide at no additional cost to the NSRS Members, regardless of whether or not it has failed, including any component, equipment or material previously replaced.

5. SERVICE PROVIDER Manufactured Dispatch Equipment – Defects & Recurring Failures - If ten percent (10%) SERVICE PROVIDER Manufactured of console equipment that fails for the same reason during the acceptance test or during the first twelve (12) months after equipment acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the SERVICE PROVIDER and the concerned NSRS Member. If the defect is deemed by NSRS Member and SERVICE PROVIDER to be systemic after the investigation is completed, the SERVICE PROVIDER shall then be responsible for replacing at no additional cost to the NSRS Member all SERVICE PROVIDER Manufactured console equipment related to the recurring or systemic failure, not only the specific equipment affected.

6. SERVICE PROVIDER Manufactured Subscriber Unit Equipment – Defects & Recurring Failures - If ten percent (10%) SERVICE PROVIDER Manufactured of Subscriber Unit equipment that fails for the same reason during the acceptance test or during the first twelve (12) months after equipment acceptance shall be indicative of a recurring or systemic failure or defect that warrants further investigation by the SERVICE PROVIDER and the concerned NSRS Member. If the defect is deemed by NSRS Member and SERVICE PROVIDER to be systemic after the investigation is completed, the SERVICE PROVIDER shall then be responsible for replacing at no additional cost to the NSRS Member all SERVICE PROVIDER Manufactured Subscriber Unit equipment related to the recurring or systemic failure, not only the specific equipment affected.

7. NSRS Member Performed Warranty Repair - The NSRS Members shall have the right to perform any maintenance and/or repairs required during the warranty period without voiding or affecting the SERVICE PROVIDER's warranty. NSRS Member technicians that

complete the repairs must have taken all training classes outlined by SERVICE PROVIDER in Attachment A, Exhibit 11 Warranty Plan. otherwise the work will void the warranty for said component. If NSRS Member work causes further system issues because of improper or negligent repair and a deeper level of SERVICE PROVIDER support is required, SERVICE PROVIDER, may charge the responsible NSRS Member for such additional support if requested.

8. Any additional purchases of equipment, including radios, and installation services which may be purchased by NSRS Members and delivered or performed by SERVICE PROVIDER after Final System Acceptance, shall be warranted on the same terms, limitations, and exclusions as are set forth herein, except that the warranty on the equipment and installation services shall be for a period of two (2) years for additional Subscriber Units items from the date of delivery of that item of equipment, one (1) year for additional Infrastructure Hardware items from the date of delivery of that item of equipment, and one (1) year from the date of completion of that installation service.

9. SERVICE PROVIDER's obligations shall not apply to:

a. Hardware or components thereof which are normally consumed in operation, or

b. Defects which are the result of improper storage, use, or installation performed by other than SERVICE PROVIDER, maintenance performed by other than SERVICE PROVIDER, or repair performed by other than SERVICE PROVIDER, or

c. Hardware which has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident, or

d. Hardware or installations altered or repaired by any party other than SERVICE PROVIDER without SERVICE PROVIDER's prior written consent.

10. While on NSRS Member's premises, SERVICE PROVIDER, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations, and shall comply with 29 CFR §1910 General Industry, 29 CFR §1926 Construction Industry, and NRS Chapter 618. SERVICE PROVIDER shall be responsible for care of DEPARTMENT's equipment and any damage to facilities during servicing.

11. Coverage and System Integration Warranty. Notwithstanding the other provisions of this Section Warranties, SERVICE PROVIDER's only Warranty as to radio coverage is that the System, prior to Regional Acceptance, shall have successfully passed the coverage tests in the Acceptance Test Plan. This Warranty is operative only when the Shared Regional Implementation occurs. For Coverage and System Integration purposes, the Testing and Acceptance section of this Agreement defines on a Regional basis, that if the NSRS Region does not fulfill the requirements of the Acceptance Tests, and the failure is solely attributable to SERVICE PROVIDER obligations under this Agreement, SERVICE PROVIDER shall promptly correct the defects at no additional cost to the Member and other NSRS Members as needed.

12. Software

The warranty for the Software is set forth in the Software License Agreement. The SERVICE PROVIDER shall update all devices to the same and latest release level prior to the conclusion of the Warranty Period at no additional cost to the NSRS Members.

13. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION AND IN THE SOFTWARE LICENSE AGREEMENT CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE HARDWARE, SOFTWARE AND SERVICES AND THE DEPARTMENT'S

EXCLUSIVE REMEDIES IN THE EVENT SUCH WARRANTIES ARE BREACHED. THEY ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES.

#### ARTICLE X- INTERFERENCE

1. Radio system coverage and performance are subject to degradation due to anomalous propagation and interference beyond the reasonable control of SERVICE PROVIDER. SERVICE PROVIDER cannot be responsible for degradation or disruption of Service caused by operation of other radio systems or by natural phenomena or other interference over which the SERVICE PROVIDER has no reasonable control. In the event of a case of degradation due to interference by an outside party, SERVICE PROVIDER will provide engineering support to the DEPARTMENT at the DEPARTMENT's expense to support the DEPARTMENT's efforts in resolving the interference issue with the outside party.

#### ARTICLE XI - PATENTS

1. SERVICE PROVIDER warrants that the System furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If the DEPARTMENT notifies SERVICE PROVIDER promptly of the receipt of any claim that the System infringes a United States patent or copyright and gives SERVICE PROVIDER information, assistance, and exclusive authority to settle and defend such claim, SERVICE PROVIDER at its own expense shall defend, or may settle, any suit or proceeding against the DEPARTMENT so far as based on a claimed infringement which breaches this warranty. If, in any such suit arising from such claim, the continued use of the System for the purpose intended is enjoined by any court of competent jurisdiction, SERVICE PROVIDER shall, at its expense and option, either: (1) procure for the DEPARTMENT the right to continue using the System, or (2) modify the System so that it becomes non-infringing, or (3) replace the System or portions thereof so that it becomes non-infringing, or (4) remove the System and refund the purchase price (less reasonable depreciation for use). The foregoing states the entire liability of SERVICE PROVIDER for patent or copyright infringement by the System and is subject to any limitation of total liability set forth in this Agreement.

2. The preceding Paragraph 1 of this Article XI shall not apply to: (1) any portion of the System which is manufactured to the DEPARTMENT's design, or (2) the use of the System in conjunction with any other apparatus or material not supplied by SERVICE PROVIDER to the extent that such conjoined use causes the alleged infringement. As to any portion of the System or use described in the preceding sentence, SERVICE PROVIDER assumes no liability whatsoever for patent infringement.

3. THE PATENT AND COPYRIGHT WARRANTY AND INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER PATENT AND COPYRIGHT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY.

#### ARTICLE XII – LIMITATION OF LIABILITY

1. Except for SERVICE PROVIDER's liability to third parties for its willful misconduct or negligent acts or omissions as more particularly described in Article XVII Miscellaneous Provisions, paragraph 24 of this Agreement, the total liability of SERVICE PROVIDER, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in

P697-16-016

contract, warranty, tort (including negligence or infringement), strict liability or otherwise, arising out of, connected with, or resulting from the performance or non-performance of this Agreement or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Service, shall not exceed one hundred percent (100%) of the Total Agreement Price . Except as to title, any such liability shall terminate upon the expiration of the Warranty Period.

2. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF AGREEMENT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL SERVICE PROVIDER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE HARDWARE OR ANY OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR DOWNTIME COSTS.

3. Any action for any claim of any kind for any loss or damages arising out of, connected with, or resulting from the performance, non-performance or breach of this Agreement, or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Services, shall be commenced within the statutory period pursuant to Nevada law, it shall be deemed waived or barred.

4. The provisions of this Section, Article XII Limitation of Liability, shall apply notwithstanding any other provisions of this Agreement or any other agreement.

5. The provisions of this Section, Article XII Limitation of Liability, shall survive the expiration or termination of this Agreement.

#### ARTICLE XIII – CONFIDENTIALITY

1. During the term of this Agreement, it is anticipated that one (1) party (hereafter the "Disclosing Party") may disclose to the other party (hereafter the "Receiving Party") information which the Disclosing Party considers proprietary and confidential. Accordingly, with respect to any specification, drawings, sketches, models, samples, tools, technical information, confidential business information or data, in written or other tangible form which: (1) has been designated in writing by the Disclosing Party as confidential or proprietary, or (2) is of the type that the Receiving Party customarily treats as confidential or proprietary, and which is furnished by the Disclosing Party to the Receiving party in contemplation of or under this Agreement (hereinafter "Information"), the Receiving Party shall treat such Information, for a period of five (5) years after the Effective Date of this Agreement, as confidential information with the same degree of care as the Receiving Party affords to confidential information of its own of a similar nature and shall not reproduce any such Information, in whole or in part, except as specifically authorized in writing by the Disclosing Party.

2. The provisions of Article XIII, paragraph 1 above, shall not apply to any Information which:

- a. is or shall become publicly available without breach of this Section, Confidentiality, on the part of the Receiving Party;
- b. is already known by the Receiving Party prior to receipt from the Disclosing Party;
- c. is independently developed by the Receiving Party;
- d. is rightfully obtained by the Receiving Party from third parties without restriction; or



e. is required to be disclosed by appropriate governmental or judicial order provided that Receiving Party gives Disclosing Party prior written notice of such order and assists Disclosing Party in taking reasonable actions to restrict such order.

3. The provisions of this Section, Confidentiality, shall survive the expiration or termination of this Agreement.

4. The confidentiality obligations of this Article XIII Confidentiality shall not apply to Software. Instead, the confidentiality and other rights and obligations with respect to Software are set forth in Attachment B Software License Agreement.

5. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The DEPARTMENT will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

#### ARTICLE XIV - TERMINATION

1. The DEPARTMENT may terminate this Agreement without cause sixty (60) calendar days after service of a termination letter to the SERVICE PROVIDER. In the event this Agreement is terminated in this manner, all finished and unfinished Hardware and Documentation Deliverables produced or made by SERVICE PROVIDER for the DEPARTMENT under this Agreement shall become the property of the DEPARTMENT, and SERVICE PROVIDER shall be entitled to receive compensation in accordance with the terms of this Agreement for any such Hardware and Documentation Deliverables. Notwithstanding the above, SERVICE PROVIDER shall not be relieved of liability to the DEPARTMENT for damages sustained by the DEPARTMENT by virtue of any breach of this Agreement by SERVICE PROVIDER described above and, after providing SERVICE PROVIDER with written notice, the DEPARTMENT may withhold any payments to SERVICE PROVIDER for the purpose of set-off of any damages, as agreed upon or finally adjudicated, against such payment.

2. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature and/or federal sources. The DEPARTMENT may terminate this Agreement, and the SERVICE PROVIDER waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the DEPARTMENT's funding from state and/or federal sources is not appropriated or is withdrawn, limited or impaired.

3. A default or breach may be declared with or without termination. This Agreement may be terminated by either Party upon written notice of default or breach to the other Party as follows:

a. If the SERVICE PROVIDER fails to provide or perform any of the professional services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or

b. If any state, county, city, or federal license, authorization, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by the SERVICE PROVIDER to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

c. If the SERVICE PROVIDER becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of a bankruptcy court; or

d. If DEPARTMENT materially breaches any material duty under this

P697-16-016

Agreement and any such breach impairs the SERVICE PROVIDER's ability to perform; or

e. If it is found by the DEPARTMENT that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by the SERVICE PROVIDER, or any agent or representative of the SERVICE PROVIDER, to any officer or employee of the State of Nevada with a view toward securing an agreement or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such agreement; or

f. If the SERVICE PROVIDER knowingly bills the DEPARTMENT for unallowable costs or non bona fide goods or services, or for goods and services not provided.

4. Termination upon a declared default or breach may be exercised after service of written notice and the subsequent failure of the defaulting Party, within thirty (30) calendar days of service of that notice, to provide evidence, satisfactory to the aggrieved Party, showing the declared default or breach has been corrected. Such correspondence shall be deemed to have been served on the date of postmark.

5. In the event of the SERVICE PROVIDER's breach of this Agreement, all costs and charges incurred by the DEPARTMENT, together with the cost of completing the work under this Agreement, shall be deducted from any money due or which may become due to said SERVICE PROVIDER. If expenses exceed the sum which would have been payable under this Agreement, then the SERVICE PROVIDER shall be liable and shall pay to the DEPARTMENT the amount of said excess.

6. In the event of: (1) any failure by the DEPARTMENT for sixty (60) or more calendar days to make any payment when due, or (2) any other material breach of this Agreement by the DEPARTMENT which shall continue for one hundred twenty (120) or more calendar days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to the DEPARTMENT by SERVICE PROVIDER, SERVICE PROVIDER shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its obligations under this Agreement for as long as the breach remains uncorrected; or (2) terminate this Agreement by written notice to the DEPARTMENT if the breach remains uncorrected.

7. In the event the DEPARTMENT terminates this Agreement as provided herein, all finished and unfinished Hardware and Documentation Deliverables produced or made by SERVICE PROVIDER for the DEPARTMENT under this Agreement shall become the property of the DEPARTMENT and SERVICE PROVIDER shall be entitled to receive compensation in accordance with the terms of this Agreement for any such Hardware and Documentation Deliverables. Notwithstanding the above, SERVICE PROVIDER shall not be relieved of liability to the DEPARTMENT for damages sustained by the DEPARTMENT by virtue of any breach of this Agreement by SERVICE PROVIDER described above and, after providing SERVICE PROVIDER with written notice, the DEPARTMENT may withhold any payments to SERVICE PROVIDER for the purpose of set-off of any damages, as agreed upon or finally adjudicated, against such payment.

#### ARTICLE XV - COST

1. "The lump sum" method of compensation shall be used for the SERVICE PROVIDER's services.

2. The Total Agreement Price to be paid by the DEPARTMENT to SERVICE PROVIDER under the terms of this Agreement is Fifty Million Six Hundred Five Thousand Six Hundred Sixty-Nine

and 13/100 Dollars. (\$50,605,669.13). The individual prices for the units of Hardware, the Software license, and the Services to be performed by SERVICE PROVIDER are those as set forth in Exhibit 6 Price Schedule. DEPARTMENT and SERVICE PROVIDER recognize that the pricing under this Agreement is dependent upon a volume discount based on the amount of Terminal and Infrastructure Hardware, including radios, purchased by DEPARTMENT. The SERVICE PROVIDER will offer the same discounted pricing to the DEPARTMENT, any additional Nevada public agencies, and users of the NSRS through the Extended Warranty period if the quantity of radios specified in the Equipment List is met. DEPARTMENT can change the Terminal Hardware types, models, and feature sets through the Change Order process to meet the forecast quantities under this Agreement. The Parties recognize that the dollar amount of SERVICE PROVIDER's price discount is largely driven by the number of radios DEPARTMENT has forecast that it will purchase under this Agreement.

In the event that the DEPARTMENT does not purchase the total number of radios under this Agreement that are represented in Exhibit 5 Equipment List and Exhibit 6 Price Schedule, DEPARTMENT agrees that SERVICE PROVIDER shall be entitled to an equitable adjustment to its discounted pricing by Change Order to appropriately adjust the Total Agreement Price. However, if the DEPARTMENT purchases other Terminal and Infrastructure Hardware in addition to the quantities specified in Exhibits 5 and 6 of this Agreement, then the value of such additional equipment purchased will offset an equal value of a number of radios not purchased. That offset number of radios not purchased shall be added to the total number of radios purchased for the purposes of determining the DEPARTMENT's entitlement to a discounted price. In other words, the value of other Terminal and Infrastructure Hardware purchased beyond the value of such equipment listed in Exhibits 5 and 6 will be credited to DEPARTMENT as a means of making up for an equal value of radios not purchased by DEPARTMENT for the purposes of SERVICE PROVIDER's determination of a discounted price. As a result of SERVICE PROVIDER's accommodation, DEPARTMENT may be entitled to the same discounted price even though the number of radios purchased is less than the amount of radios forecast to be purchased in Exhibits 5 and 6. SERVICE PROVIDER agrees to such accommodation to DEPARTMENT in exchange for DEPARTMENT's purchases of Terminal and Infrastructure Hardware beyond the quantities set forth in Exhibits 5 and 6.

Additionally, the Total Agreement Price is based on the Parties' acknowledgement that State funding and requirements are to be used for this PROJECT. In the event the DEPARTMENT elects to incorporate Federal funding into this PROJECT in the future, the Parties will negotiate an amendment to this Agreement to incorporate the additional costs that SERVICE PROVIDER may incur as a result of any additional Federal requirements placed upon SERVICE PROVIDER.

SERVICE PROVIDER will offer the same discounting offered on radios on the contract for a new HIGH TIER radio that becomes available in the timeframe of the agreement to the DEPARTMENT. A high tier radio includes Harris XL, XG, etc. This will exclude Harris low tier. Any low tier radio can receive a max fifty percent (50%) off list discount.

Terminal Hardware Pricing after extended warranty identified below:

<b>Terminal Hardware Pricing Discount Post Warranty</b>	
<b>• Discount per PO Quantity</b>	
<b>Tier Quantity</b>	<b>Discount off List</b>
4,000+	70%
3,000-3,999	65%
2,000-2,999	60%
1,000-1,999	55%
1-999	48%

### 3. Service Provider Radio System Equipment

The mutually agreed upon SERVICE PROVIDER radio system equipment pricing amounts have been priced on a commercial, firm-fixed price basis and are set forth in the table below and in the Total NSRS Price Summary, Table B.1 in Exhibit 6 to the Scope of Services. The total amount of the following categories of Service Provider radio system equipment listed in the table below Nine Million Nine Thousand Three Hundred Seventy-Six and 46/100 Dollars (\$9,009,376.46) will be billed in accordance with the contract milestone payments listed in ARTICLE XVI, paragraph 4. The pricing amounts do not include any sales and use taxes. Applicable sales and use taxes, if any, will be included on invoices and payable by DEPARTMENT.

<b>Service Provider Radio System Equipment Pricing Amounts</b>	
System Control Equipment, Software, and Licensing	\$2,625,307.62
Network Monitoring and Fault Management Equipment, Software, and Licensing	979,020.00
Radio System Equipment, Software, and Licensing	13,848,871.71
Antenna Systems	1,775,692.88
Networking Equipment, Software, and Licensing	1,185,603.21
Spare Equipment	1,418,674.44
Dispatch Equipment	1,451,723.25
Extended Warranty Support	2,144,642.00
DEPARTMENT Greenfield Sites Radio System Equipment (Table B.11 without Civils)	2,988,389.54
Less Additional Discount – Infrastructure	(19,408,548.17)
<b>Total</b>	<b>\$9,009,376.46</b>

### 4. SERVICE PROVIDER Radio System Deployment Services and SERVICE PROVIDER Training

The mutually agreed upon total amounts for System Engineering Services and Program Management Services have been priced on a commercial, firm-fixed price basis and are set forth in the table below and in Table B.1, Total NSRS Price Summary, in Exhibit 6 to the Scope of Services. System Engineering Services and Program Management Services will be paid monthly as follows. Invoices will be submitted monthly together with monthly summary time reports. The monthly summary time reports will show the total number of hours worked in the month on the DEPARTMENT project by the applicable categories of SERVICE PROVIDER engineers, program managers, and technicians. The total number of hours worked by each category of SERVICE PROVIDER engineers, program managers, and technicians in the month will then be multiplied by the hourly rate for the applicable category of services using the Harris Price Catalog rates set forth in the table below. No additional documentation will be required for payment of monthly invoices. The cumulative total amount of System Engineering Services and Program Management Services billed by SERVICE PROVIDER shall not exceed the total amount of System Engineering Services and Project Management Services shown in the table below.

<b>SERVICE PROVIDER Radio System Deployment Services and System Training Pricing Amounts</b>	
System Engineering Services	\$4,025,524.00
Program Management Services	1,325,100.00

System Training	464,555.85
Total	\$5,815,179.85

Description	List Price (Hourly Rate-Fully Burdened)
SERVICE, RF INTEGRITY Hourly rate for Engineering services to predict RF coverage from designated transmission site.	\$ 151.25
SERVICE, HARRIS SYSTEM ENGINEERING Hourly rate for System Engineering Services.	\$ 198.75
SERVICE, HARRIS SENIOR SYSTEM ENGINEERING Hourly rate for Senior System Engineering Services	\$ 300.00
SERVICE, HARRIS PROJECT MANAGEMENT Hourly rate for Project Management to assist implementing customer projects.	\$ 198.75
SERVICE, HARRIS SENIOR PROJECT MANAGEMENT Hourly rate for Senior Project Management to assist implementing customer projects.	\$ 300.00
SERVICE, DATA SYSTEM ENGINEER Hourly rate for Data System Engineer	\$ 187.50
SERVICE, SENIOR SYSTEM TECHNICIAN, Hourly Rate for Senior Technicians to perform installation, testing, system alignment or evaluate special applications. Travel and living will be billed in addition to this fee	\$ 150.00
SERVICE, SYSTEM TECHNICIAN, Hourly rate for Technicians to perform installation, testing, system alignment or evaluate special applications. Travel and living will be billed in addition to this fee	\$ 125.00

Training will be invoiced upon its completion by DEPARTMENT participants of training classes at the applicable class price listed in the pricing pages in Exhibit 6 to the Scope of Services. Invoice documentation will include the participant names, classes taken, and class prices.

#### 5. Subcontract (Third Party) Materials and Services Amounts

System Equipment Installation Services	\$ 4,103,765.00
Site Infrastructure Civils (Base Proposal and Greenfield Sites) (Estimate)	\$ 15,866,655.00
Site Development Services (Base Proposal and Greenfield Sites)	\$ 2,269,882.00

- a) System Equipment Installation Services includes, without limitation, services costs for installation of radio equipment, antenna systems, and removal of old equipment as further discussed in the Statement of Work.
- b) Site Infrastructure Civils (Base Proposal and Greenfield Sites) includes, without limitation, materials and services costs for manufacture and installation of radio towers and equipment shelters together with performance of associated site work, including providing

P697-16-016

roads, fencing, land clearing, generators and LP tanks, electrical work, DC power systems, and assistance with site acquisition, permits, and drawings, all as further discussed in the Statement of Work.

- c) Site Development Services (Base Proposal and Greenfield Sites) includes, without limitation, services to be performed by third party Site Managers and performance of site surveys, as further discussed in the Statement of Work.

6. Due to the scope and nature of this Agreement, contingency funds have been established to address unforeseen SERVICE PROVIDER services that may be required to complete the PROJECT in a timely manner. The scope of services requiring the use of contingency funds will be agreed upon in writing by the Parties to this Agreement prior to the commencement of such services. The cost of contingency services will also be negotiated prior to performing the services and will include all costs associated with the work. The total costs of the work for the contingency funds for this Agreement shall not exceed the sum of Five Million Sixty Thousand Five Hundred Sixty-Six and No/100 Dollars (\$5,060,566.00) unless such sum is increased through a written amendment to this Agreement. Contingency services to be performed by the SERVICE PROVIDER shall not commence until its receipt of written approval from the DEPARTMENT. The DEPARTMENT Encumbered Contract Value is the sum of the Total Agreement Price at execution of this Agreement (or as modified by subsequent Change Order) plus the contingency amount, unless increased by a written amendment and signed by all Parties.

7. The total DEPARTMENT Encumbered Contract Value, which includes the contingency, shall not exceed Fifty-Five Million Six Hundred Sixty-Six Thousand Two Hundred Thirty-Five and 13/100 Dollars (\$55,666,235.13), unless approved by all Parties through a written Amendment.

8. The SERVICE PROVIDER shall pay all associated travel costs for three (3) DEPARTMENT employees to and from the factory staging location in Lynchburg, VA. The SERVICE PROVIDER shall also pay all associated travel costs for two (2) DEPARTMENT employees to and from the Harris User Group once a year for the duration of this Agreement. Travel costs will be paid at the accepted GSA rates.

9. No additional costs shall be allowed to the SERVICE PROVIDER for assistance by, or services of others, except by express permission in writing by the DEPARTMENT. The SERVICE PROVIDER shall furnish the DEPARTMENT, on the form provided, no later than thirty (30) calendar days prior to commencement of work, performance and payment bonds in an amount equal to the firm-fixed price cost of this Agreement. The performance and payment bonds shall terminate upon Final System Acceptance in accordance with Article VI, paragraph 5.

#### ARTICLE XVI - SCHEDULE OF PAYMENTS

1. The SERVICE PROVIDER shall submit a signed invoice in accordance with the approved Exhibit 6 Price Schedule for all services rendered along with one (1) copy of substantiating documentation. The invoice must be submitted on the SERVICE PROVIDER's stationery using the DEPARTMENT's format or submitted on the DEPARTMENT's standard invoice form. The DEPARTMENT will utilize its normal accounting procedure in the payment of the invoices submitted. All invoice payment(s) shall be due sixty (60) calendar days following the submittal date of the SERVICE PROVIDER invoice.

2. Payment will be made for one hundred percent (100%) of the amount of each invoice, until a maximum of ninety percent (90%) of the total Agreement costs have been billed by the SERVICE PROVIDER. Thereafter, payment for the remaining ten percent (10%) of the total Agreement costs shall be withheld by the DEPARTMENT, until such time as the professional

services delivered by the SERVICE PROVIDER have been completely accepted by the DEPARTMENT. The final audit shall be performed after the release of the retained amount, and may cause an adjustment of payments to the DEPARTMENT or to the SERVICE PROVIDER. No interest shall be paid to the SERVICE PROVIDER on this retained amount or any adjustment of payments.

3. The DEPARTMENT reserves the right to inspect and approve the professional services performed before payment is made to the SERVICE PROVIDER. Payment will be withheld for deliverables and professional services the DEPARTMENT determines to be unsatisfactory in that they have not been provided in a workmanlike manner consistent with standards in the trade, profession, or industry. Payment shall remain unpaid until the professional services are completed in accordance with the standards and work requirements defined in this Agreement. In such an event, the DEPARTMENT will provide the SERVICE PROVIDER with a written explanation as to why a payment has been withheld.

4. **SERVICE PROVIDER Radio System Equipment Milestone Payments**

Milestone Payment	%	Milestone Payment Amount
1. Contract Mobilization due at Contract Signing & ISC Approval	15%	\$ 1,351,406.47
2. Customer Approval of Detailed Design Review – Region 1	5%	\$ 450,468.82
3. Customer Approval of Detailed Design Review – Region 2	5%	\$ 450,468.82
4. Customer Approval of Detailed Design Review – Region 3	5%	\$ 450,468.82
5. Completion of Equipment Staging for Region 1	2%	\$ 180,187.53
6. Completion of Equipment Staging for Region 2	1%	\$ 90,093.75
7. Completion of Equipment Staging for Region 3	2%	\$ 180,187.53
8. Equipment Delivery for Region 1	8%	\$ 720,750.12
9. Equipment Delivery for Region 2	4%	\$ 360,375.06
10. Equipment Delivery for Region 3	8%	\$ 720,750.12
11. Completion of Equipment Installation - Region 1	10%	\$ 900,937.65
12. Completion of Equipment Installation - Region 2	6%	\$ 540,562.59
13. Completion of Equipment Installation - Region 3	10%	\$ 900,937.65
14. Final System Acceptance - Region 1	6%	\$ 540,562.59
15. Final System Acceptance - Region 2	3%	\$ 270,281.29
16. Final System Acceptance - Region 3	10%	\$ 900,937.65
<b>Service Provider Radio System Equipment Billing Total</b>	<b>100%</b>	<b>\$ 9,009,376.46</b>
<b><u>Terminal Hardware Payments:</u></b>		
DEPARTMENT Subscriber Equipment (Terminals) and Services amounts will be invoiced upon shipment of the Terminal units on a per unit basis at the unit prices set forth in the pricing pages less the Radio Volume Discount percentage listed in Table B.1, Price Summary. Shipment schedule will be determined by customer.		

**Payment Notes for Service Provider Radio System Equipment Milestone Payments**

- A. **Equipment Delivery Partial Payments** – Partial billings are permitted for Equipment Delivery in amounts determined by multiplying: (1) a fraction equal to the price of the equipment delivered divided by the total price of the equipment to be delivered for the applicable Region; by (2) the Equipment Delivery Milestone Payment Amount for the applicable Region set forth in Lines 8, 9 and 10 in the above Milestone Payments Table.
- B. **Completion of Equipment Installation Partial Payments** – Partial billings are permitted for Completion of Equipment Installation in amounts determined by multiplying: (1) a fraction equal to the number of sites in the applicable Region where Completion of Equipment Installation has occurred divided by the total number of sites in the applicable Region; by (2) the Completion of Equipment Installation Milestone Payment Amount for the applicable Region set forth in Lines 11, 12 and 13 in the above Milestone Payments Table.

**5. Subcontract (Third Party) Materials and Services**

a) System Equipment Installation Services, Site Infrastructure Civils (Base Proposal and Greenfield Sites) and Site Development Services (Base Proposal and Greenfield Sites) include materials and services to be provided by third party subcontractors in accordance with the terms and provisions of subcontracts approved by DEPARTMENT. The mutually agreed upon total amounts for System Equipment Installation Services, Site Infrastructure Civils (Base Proposal and Greenfield Sites) and Site Development Services (Base Proposal and Greenfield Sites) have been priced on a variable basis based on expenditures and agreed markup and are set forth in the table below and in Table B.1, Total NSRS Price Summary, in Exhibit 6 to the Scope of Services. The Site Infrastructure Civils (Base Proposal and Greenfield Sites) amount is an estimated amount only and will be revised as mutually agreed upon as the work to be performed is further defined and mutually agreed upon.

b) System Equipment Installation Services, Site Infrastructure Civils (Base Proposal and Greenfield Sites) and Site Development Services (Base Proposal and Greenfield Sites) will be paid monthly as follows: Invoices will be submitted by SERVICE PROVIDER monthly together with copies of the invoices received by SERVICE PROVIDER from the subcontractors providing the System Equipment Installation Services, Site Infrastructure Civils (Base Proposal and Greenfield Sites) and Site Development Services (Base Proposal and Greenfield Sites) materials and services. No additional documentation will be required for payment of monthly invoices. The SERVICE PROVIDER invoice amounts will be equal to the total of the attached subcontractor invoice amounts plus a markup percentage amount of twenty-five percent (25%) of the total of the attached subcontractor invoice amounts for material and thirty-two (32%) of the total of the attached subcontractor invoice amounts for services.

c) For invoices submitted for Site Infrastructure Civils (Base Proposal and Greenfield Sites), ten percent (10%) or less of each invoice payment amount for Site Infrastructure Civils (Base Proposal and Greenfield Sites), may be withheld, administered and returned by DEPARTMENT in accordance with all of the terms and provisions set forth in DEPARTMENT policy, provided, however, that all of the amounts retained for Site Infrastructure Civils (Base Proposal and Greenfield Sites) work performed in an applicable Region shall be paid to SERVICE PROVIDER on or before the date when the Final System Acceptance milestone payment for an applicable Region is paid to SERVICE PROVIDER under the SERVICE PROVIDER Radio System Equipment Milestone Payment Schedule.

d) **The definition of “third party materials” in this Agreement does not include any vendor materials listed in the Harris Price Catalog pages (“Vendor**



**Materials”). Any Vendor Materials sold by SERVICE PROVIDER to DEPARTMENT which are not otherwise listed with a unit price in the pricing schedule pages in the Service Agreement, will be sold at the price listed in the Harris Price Catalog less a twenty-six percent (26%) discount. SERVICE PROVIDER will provide a copy of the applicable Harris Price Catalog page as substantiation for the price of any Vendor Materials.**

6. Unless otherwise agreed by the parties, SERVICE PROVIDER's shall electronically submit invoices using the DEPARTMENT's cover page over the SERVICE PROVIDER's standard invoice template. DEPARTMENT shall pay all invoices via Electronic Funds Transfer ("EFT") directly to SERVICE PROVIDER's banking institution using SERVICE PROVIDER's banking information and EFT instructions below.

Harris Corporation  
Bank of America, New York, NY 10038  
Account No.: 4451124230  
Routing/ABA (ACH ONLY): 111000012  
Routing/ABA (Wire ONLY): 026009593

7. Payment of invoices, interest penalties, and discounts shall be paid as follows:

a. The SERVICE PROVIDER shall be paid within sixty (60) calendar days of submission of an invoice which is complete, correct, and undisputed by the DEPARTMENT.

b. The DEPARTMENT shall have fifteen (15) calendar days after submission of an invoice to dispute any or all of the charges on that invoice. The undisputed amount shall be paid to the SERVICE PROVIDER within sixty (60) calendar days of the date of submission. The disputed amount shall be negotiated and resolved in good faith by both Parties within fifteen (15) calendar days and paid within thirty (30) calendar days after the date the corrected invoice is received by the DEPARTMENT or is approved by both Parties for payment.

c. If the DEPARTMENT fails to pay the SERVICE PROVIDER the undisputed amount within sixty (60) calendar days after the submission date of the invoice, the interest penalty assessed to the DEPARTMENT shall be one percent (1%) of the undisputed amount per month, not to exceed a total of One Thousand and No/100 Dollars (\$1,000.00) per month per invoice.

d. Payment of penalties shall not apply to the final payment or bill pertaining to this Agreement as determined by the post audit.

#### ARTICLE XVII - MISCELLANEOUS PROVISIONS

1. The SERVICE PROVIDER shall be responsible for and shall comply with all applicable federal, state, and local government obligations and DEPARTMENT policies and procedures. The SERVICE PROVIDER will be responsible for and shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are SERVICE PROVIDER's responsibility in accordance with NRS Chapter 361. The SERVICE PROVIDER warrants that it has a valid business license. The SERVICE PROVIDER agrees to be responsible for and shall pay any such government obligations not paid by its subcontractors during performance of this Agreement. The DEPARTMENT may set-off any consideration due against any delinquent government obligation.

2. It is expressly understood that the SERVICE PROVIDER is an independent contractor, and is subject to all statutes and laws, including NRS 333.700 relating to independent contractors. Nothing contained in this Agreement shall be deemed or construed to create a

partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the DEPARTMENT whatsoever with respect to the indebtedness, liabilities, and obligations of the SERVICE PROVIDER or any other party. Neither the SERVICE PROVIDER nor its employees, agents or representatives shall be considered employees, agents or representatives of the DEPARTMENT.

3. The SERVICE PROVIDER shall be solely responsible for its own employees, and the DEPARTMENT shall have no obligation with respect to:

- a. Withholding of income taxes, FICA, or any other taxes or fees;
- b. Industrial insurance coverage;
- c. Participation in any group insurance plans available to employees of the DEPARTMENT;
- d. Participation or contributions by either the SERVICE PROVIDER or the DEPARTMENT to the Public Employees Retirement System;
- e. Accumulation of vacation leave or sick leave; or
- f. Unemployment compensation coverage provided by the DEPARTMENT.

4. The SERVICE PROVIDER shall indemnify and hold the DEPARTMENT harmless from, and defend the DEPARTMENT against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes, fees, insurance, contributions, leave, or coverage.

5. Unless expressly provided in this Agreement, the SERVICE PROVIDER shall not engage or use the devices and/or services of the DEPARTMENT's personnel without the prior written consent of the DEPARTMENT.

6. The SERVICE PROVIDER shall furnish the DEPARTMENT, on the form provided, prior to commencement of work, the performance and payment bonds in the amount equal to the cost of this Agreement.

7. The SERVICE PROVIDER shall, before commencing professional services under the provisions of this Agreement, furnish to the DEPARTMENT proof of worker's compensation insurance as required by the NRS.

8. The SERVICE PROVIDER shall furnish a Certificate of Errors and Omissions Insurance with a minimum limit of Three Million and No/100 Dollars (\$3,000,000.00).

9. The SERVICE PROVIDER shall furnish a Certificate, a Declarations Page, and an Endorsement designating the DEPARTMENT as an additional insured evidencing Commercial General Liability Insurance with a limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. These policies shall be maintained for the entire period of this Agreement. The policies shall include a thirty (30) calendar day advance written notice of any cancellation of said policies. The SERVICE PROVIDER shall furnish the DEPARTMENT with certificates of such insurance prior to commencement of professional services.

10. All insurance required by this Agreement shall be placed with insurers with a rating from the current issue of Best's Key Rating Guide of no less than A-: VII.

11. The DEPARTMENT has the option of requesting, at any time, a meeting with the SERVICE PROVIDER or its authorized representative to discuss and review PROJECT status and the SERVICE PROVIDER shall furnish thereafter a copy of the minutes of such meetings to the DEPARTMENT.

12. The SERVICE PROVIDER has total responsibility for the accuracy and correctness of data prepared under the terms of this Agreement, and shall check all such material accordingly for completeness, missing items, correct multipliers, and consistency. The deliverables shall be reviewed by the DEPARTMENT for conformity with the DEPARTMENT's procedures and contract terms.

13. The SERVICE PROVIDER shall appear as a consultant and if necessary as an expert witness on behalf of the DEPARTMENT in any subsequent court action which involves any of the services required by this Agreement. Compensation for services rendered in this regard will be paid at a rate to be negotiated at the time such services are necessary.

14. Upon completion, termination or cancellation of the services embraced under this Agreement, all professional services inclusive of research, investigation, and analysis data, reports (including files stored on mobile media), computations, tabulations, original drawings, and design files (including CAD information stored on mobile media), correspondence input from external sources (including subcontractors), etc., shall be delivered to and become the property of the DEPARTMENT, without limitation. Reuse of said materials, information or data, during performance or following termination of this Agreement, on any other project or for any other purpose except as provided for herein, shall be at the DEPARTMENT's discretion and the DEPARTMENT's sole decision. The SERVICE PROVIDER shall not utilize any materials, information, or data obtained as a result of performing the services called for in this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The SERVICE PROVIDER shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performing the services called for in this Agreement, in any publication or presentation, without the written permission of the employee or agent to whom the opinion is attributed, in addition to the written permission of the DEPARTMENT.

15. All design drawings must be created and delivered to the DEPARTMENT in Vision ".vsdx" format. Drawing files converted to Visio ".vsdx" format from other formats will not be accepted by the DEPARTMENT. Files must be delivered to the DEPARTMENT via USB flash drive, FTP, or email. All files must adhere to the DEPARTMENT's standards.

16. All reports and notes for special provisions shall be delivered to the DEPARTMENT via USB flash drive, FTP, or email using the most current version of Microsoft Word.

17. The SERVICE PROVIDER agrees that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared by the SERVICE PROVIDER in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The SERVICE PROVIDER shall remit all such documents to the DEPARTMENT upon completion, termination, or cancellation of this Agreement or upon written request of the DEPARTMENT. The SERVICE PROVIDER shall not use, willingly allow, or cause to have such documents used for any purpose other than performance of the SERVICE PROVIDER's obligation under this Agreement, without the prior written consent of the DEPARTMENT.

18. The SERVICE PROVIDER and successors, executors, administrators, and assigns of the SERVICE PROVIDER's interest in the professional services or the compensation herein provided shall be bound to the DEPARTMENT to the full legal extent to which the SERVICE PROVIDER is bound with respect to each of the terms of this Agreement.

19. The SERVICE PROVIDER warrants that it has not employed or retained any company or persons (other than a bona fide employee working solely for the SERVICE PROVIDER) to solicit or secure this Agreement and that the SERVICE PROVIDER has not paid or agreed to pay any company or persons (other than a bona fide employee working solely for the SERVICE PROVIDER) any fee, commission, percentage, brokerage fee, or any other gifts contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

20. Dispute Resolution Procedures:

a. Issue Resolution Ladder: The Issue Resolution Ladder is the process for elevating Disputes from the PROJECT's field level to various levels of review, up to the Parties' executive management if necessary, with defined time limits for each level of review. The goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field level as possible while recognizing the requirement to elevate the Dispute to the next level of review before the Dispute impacts cost or schedule. The Issue Resolution Ladder shall consist of four (4) levels of review and corresponding time limits to review, as follows:

Level of Review	SERVICE PROVIDER Reviewer	DEPARTMENT Reviewer	Time Limit
4	Executive Board	DEPARTMENT Director's Office	2 weeks
3	Regional Manager	Chief of Project Management / District Engineer	2 weeks
2	Project Manager	Project Manager	1 week
1	Technical Lead	Technical Lead	3 days

The individuals from the DEPARTMENT's and SERVICE PROVIDER's respective organizations filling the roles of reviewers in the Issue Resolution Ladder, and the documentation required for each level of review in the Issue Resolution Ladder shall be identified by the respective team members. If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute within the time limits set forth, the reviewers shall elevate the Dispute to the next level of review. If all four (4) levels of review have been exhausted, then Section B. below shall apply.

b. For purposes of Outcome of Issue Resolution Ladder:

1. If the DEPARTMENT and SERVICE PROVIDER succeed in resolving an issue using the Issue Resolution Ladder, the Parties shall memorialize the resolution in writing, including execution of any Change Order as appropriate and promptly perform their respective obligations in accordance therewith.

2. If a Dispute is not timely resolved using the Issue Resolution Ladder, then the Parties agree to submit the dispute to non-binding mediation using a single mediator mutually agreed upon by the Parties and following the Commercial Mediation Rules of the American Arbitration Association ("AAA"). As to the appointment of the mediator, and in accordance with the AAA, section M-4 Appointment of the Mediator, the Parties shall mutually agree to appoint an impartial mediator residing in Nevada or familiar with Nevada law and appoint such mediator for any dispute submitted to the American Arbitration Association for mediation or conciliation. If the dispute is unable to be resolved through good faith negotiations and non-binding mediation, then the Parties may pursue all of their legal and equitable remedies.

c. State court Litigation Only if the Parties are unable to settle a Dispute following Section B. above, then either Party may thereafter file a lawsuit in the Nevada First Judicial District Court located in Carson City, Nevada. Said lawsuit shall be filed no later than one hundred eighty (180) calendar days following issuance mediation finding. Service of the complaint shall be as prescribed by law, and all Parties agree to waive jury trial and rely on an objective procedure before a judge experienced in matters of commercial law.

d. Continuation of Work and Payments:

1. At all times during Dispute Resolution Procedures, SERVICE PROVIDER and all SERVICE PROVIDER -Related Entities shall continue with the performance of the Work and their obligations, including any undisputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by the DEPARTMENT in its sole discretion. SERVICE PROVIDER acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if SERVICE PROVIDER's position in connection with the Dispute ultimately prevails.

2. During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of this Agreement, the Project Management Plan, the Governmental Approvals, and applicable Governmental Rules.

3. During the course of any Dispute Resolution Procedures, the DEPARTMENT shall continue to pay to SERVICE PROVIDER, when due, all undisputed amounts owing under this Agreement.

e. Joinder: SERVICE PROVIDER agrees that, (a) at the DEPARTMENT's request, SERVICE PROVIDER shall take appropriate action to join third parties and Subcontractors involved in the design or construction of any part of the PROJECT as parties in dispute resolution proceedings under this Article XVII, Paragraph 20, and (b) SERVICE PROVIDER will allow itself to be joined as a participant in any dispute, arbitration or other proceeding that involves the DEPARTMENT and any other Person relating to the PROJECT. This provision is for the benefit of the DEPARTMENT and not for the benefit of any other party.

f. SERVICE PROVIDER Effect on Surety: Any decisions made in accordance with this Article XVII that are binding on SERVICE PROVIDER shall also be binding on the Surety under the Performance Bond; provided, however that unless the Surety is a party to such proceedings, such decisions shall not affect any defenses which are special to the Surety (i.e., defenses available to the Surety which could not have been asserted by SERVICE PROVIDER in the underlying proceeding). In the event that the Surety is a party to any proceedings, it shall have the right to, and must, assert any such special defenses therein.

g. Emergency Dispute Resolution: If a Dispute arises which must be resolved expeditiously to prevent serious damage to person or property, or serious interference with a Critical Path, both Parties shall make every effort to resolve such Dispute quickly. In such case, if SERVICE PROVIDER's Project Manager and the DEPARTMENT's Project Manager cannot reach a resolution of that Dispute within twenty-four (24) hours, they must refer the Dispute to the DEPARTMENT's Director and SERVICE PROVIDER's Chief Executive Officer (or other officer with authority to make final decisions subject only to board approval and any required third party approvals) for a meeting between the DEPARTMENT's Director and SERVICE PROVIDER's Chief Executive Officer to occur within the following twenty-four (24) hours. Once the urgent aspects of the Dispute have been resolved, the Parties may continue with the remaining procedures for dispute resolution if necessary and to the extent applicable.

h. Time Limitation: SERVICE PROVIDER acknowledges and agrees that the

P697-16-016

DEPARTMENT is subject to substantial constraints which have resulted in limitations on its ability to increase the Total Agreement Price or extend a Completion Deadline. SERVICE PROVIDER acknowledges and agrees that, due to limitations on funding for the PROJECT, prompt resolution of Disputes is of vital importance to the DEPARTMENT. SERVICE PROVIDER agrees that the time limitations stated in this Agreement for the filing of Claims and/or complaints with the Disputes Review Team and any subsequent State court litigation pursuant to this Article XVII are necessary and reasonable.

21. During the performance of this Agreement, the SERVICE PROVIDER, for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations:** The SERVICE PROVIDER shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21 as they may be amended from time to time (hereinafter "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. **Nondiscrimination:** The SERVICE PROVIDER, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The SERVICE PROVIDER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5. of the Regulations, including employment practices, when the Agreement covers a program set forth in Appendix B of the Regulations.

c. **Solicitations for Subcontracts, Including Procurement of Materials, and Equipment:** In all solicitations either by competitive bidding or negotiation made by the SERVICE PROVIDER for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the SERVICE PROVIDER of the SERVICE PROVIDER's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap, or national origin.

d. **Information and Reports:** The SERVICE PROVIDER shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a SERVICE PROVIDER is in the exclusive possession of another who fails or refuses to furnish this information, the SERVICE PROVIDER shall so certify to the DEPARTMENT, or the FHWA if appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of the SERVICE PROVIDER's noncompliance with the nondiscrimination provisions of this Agreement, the DEPARTMENT shall impose such Agreement sanctions as it or the FHWA, if appropriate, may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the SERVICE PROVIDER under the Agreement until the SERVICE PROVIDER complies, and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

f. **Incorporation of Provisions:** The SERVICE PROVIDER will include the provisions of Paragraphs (a) through (f) above in every subcontract including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued

pursuant thereto. The SERVICE PROVIDER will take such action with respect to any subcontract or procurement as the DEPARTMENT, or the FHWA if appropriate, may direct as a means of enforcing such provisions including sanctions for non-compliance. In the event SERVICE PROVIDER becomes involved in or is threatened with litigation by a subcontractor or supplier as a result of such direction, the SERVICE PROVIDER may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and the SERVICE PROVIDER may request the United States to enter into such litigation to protect the interests of the United States.

22. In the event federal funds are used for payment of all or part of this Agreement, the SERVICE PROVIDER, for itself, its assignees, and successors in interest agrees as follows:

a. Debarment and/or Suspension: The SERVICE PROVIDER certifies that neither it nor its subcontractors, nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. SERVICE PROVIDER is subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

b. ADA: The SERVICE PROVIDER and subcontractor shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 CFR, Part 27, and any relevant program-specific regulations.

c. Civil Rights: The SERVICE PROVIDER and subcontractor shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability, or handicap condition, including AIDS and AIDS-related conditions.

23. Each Party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records and documents pertaining to this Agreement and present, at any reasonable time and upon reasonable advance written notice, such information for inspection, examination, review, audit, and copying at any office where such records and documentation are maintained. It is expressly understood that the duly authorized representatives of the DEPARTMENT, and the FHWA if appropriate, shall have the right to inspect/audit the professional services and charges of the SERVICE PROVIDER whenever such representatives may deem such inspection to be desirable or necessary. Such records and documentation shall be maintained for three (3) years after final payment is made.

24. To the fullest extent permitted by law, the SERVICE PROVIDER shall defend, indemnify, and hold harmless the State of Nevada, and the employees, officers, and agents of the State of Nevada from any liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorney's fees, that State of Nevada may sustain, incur or be required to pay by reason of third party claims, demands and causes of action for damages resulting from personal injuries, loss of life or damage to tangible property to the extent or result caused by the negligence, errors, omissions, reckless, or intentional misconduct of the SERVICE PROVIDER or the employees or agents of the SERVICE PROVIDER in the performance of this Agreement. State of Nevada agrees to notify SERVICE PROVIDER in writing as soon as practical of any third-party claim, demand or cause of action for which State of Nevada will request indemnification from SERVICE PROVIDER. State of Nevada will provide SERVICE PROVIDER with the necessary information and assistance to defend or settle such claim, demand or cause of action. The obligations of SERVICE PROVIDER under this paragraph shall survive the expiration or termination of this Agreement.

P697-16-016

25. The SERVICE PROVIDER shall use its own vehicles and the DEPARTMENT is not responsible for the payment of any premiums, deductible, or assessments on any insurance policies purchased by the SERVICE PROVIDER.

26. The SERVICE PROVIDER warrants that all deliverables and work produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry.

27. The SERVICE PROVIDER is required to register as a vendor with the Nevada State Controller's office. The Registration Substitute IRS Form W-9 can be accessed at [http://controller.nv.gov/VendorServices/Vendor\\_Services.html](http://controller.nv.gov/VendorServices/Vendor_Services.html). The SERVICE PROVIDER will follow the Registration Instructions, complete the Registration Substitute IRS Form W-9 and submit it to the State Controller's Office.

28. The SERVICE PROVIDER agrees that, prior to any sale, transfer, business name change, change in principals, or any other occurrence that alters this Agreement in any way, the SERVICE PROVIDER shall notify the DEPARTMENT of such intent at least seven (7) calendar days prior to making said change.

29. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Party at the address set forth below:

FOR DEPARTMENT: Rudy Malfabon, P.E., Director  
Attn: Denise Inda  
Nevada Department of Transportation  
Division: Traffic Operations  
1263 South Stewart Street  
Carson City, Nevada 89712  
Phone: (775) 888-7080  
E-mail: [dinda@dot.nv.gov](mailto:dinda@dot.nv.gov)

FOR SERVICE PROVIDER: Harris Legal Department  
Harris Corporation  
221 Jefferson Ridge Parkway  
Lynchburg, VA 24501  
Phone: (434) 455-9462  
E-mail: [pbeeson@harris.com](mailto:pbeeson@harris.com)

30. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The Parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

31. As used herein the term "SERVICE PROVIDER" shall include the plural as well as the singular, and the feminine as well as the masculine.

32. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, or accidents, fires, explosions, earthquakes, floods, winds, failure of public transportation, SERVICE PROVIDER's inability to timely obtain necessary materials, items, components or



services from suppliers who are affected by the foregoing circumstances, the failure of the DEPARTMENT to perform its obligations hereunder in a timely manner or any other similar serious cause beyond the reasonable control of either Party ("Excusable Delays"). In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated promptly to perform in accordance with the terms of the Agreement after the intervening cause ceases.

33. In connection with the performance of work under this Agreement, the SERVICE PROVIDER agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, pregnancy, sexual orientation, genetic information (GINA) or gender identity or expression, including, without limitation, with regard to 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 without limitation apprenticeship. The SERVICE PROVIDER further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

34. The DEPARTMENT and SERVICE PROVIDER shall keep all confidential information produced, prepared, observed, or received by the Parties to the extent that such information is confidential by law or otherwise required by this Agreement.

35. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The DEPARTMENT will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

36. The SERVICE PROVIDER shall not assign or subcontract any of the work performed under this Agreement without the prior written approval of the DEPARTMENT through the Subcontractor/Service Provider Request process. Any assignment of rights or delegation of duties under this Agreement, without the prior written consent of the DEPARTMENT, shall be void.

37. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

38. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, the recovery of actual damages.

39. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third-party beneficiary status hereunder, or to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage, or pursuant to the terms or provisions of this Agreement.

40. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.

41. This Agreement may be used by other State agencies, local governments, and public safety organizations as defined in NRS 332.015 and 47 CFR 90.20, who are intended third-party beneficiaries of this Agreement. Any local government may join or use this Agreement subject to all terms and conditions thereof pursuant to NRS 332.195. The State is

not liable for the obligations of any local government which joins or uses this Agreement to purchase subscriber equipment at the prices set forth in the pricing schedule and in accordance with the terms, including applicable warranties of this Agreement unless otherwise specified herein. This pricing cannot be combined with any other SERVICE PROVIDER promotional offers. Such local governments shall place their own order(s) directly with SERVICE PROVIDER, and SERVICE PROVIDER shall deal directly with any local government the DEPARTMENT approves to use this Agreement. The terms and conditions of this Agreement shall govern purchases by other local governments unless they and SERVICE PROVIDER agree to execute separate contracts. With the approval of SERVICE PROVIDER, any local government using this Agreement may add those terms and conditions required by statute, ordinances, or regulations. To the extent permitted by law, the parties may agree to additional or modified terms and conditions unique to the local government or as required by the circumstances surrounding the purchase. The DEPARTMENT, its officials and employees, are not responsible for placement of orders, invoicing, payments, contractual disputes, or any other transactions between SERVICE PROVIDER and any other local governments. In no event shall the DEPARTMENT, its officials or employees, be responsible for any costs, damages or injury resulting to any party from use of this Agreement. If, when preparing a local government contract, the additional terms and conditions of a local government seeking to purchase pursuant to a cooperative procurement are unacceptable to SERVICE PROVIDER, SERVICE PROVIDER may withdraw its consent to extension of this Agreement to that particular local government. The DEPARTMENT assumes no responsibility for any notification of the availability of this Agreement for use by other local governments, but SERVICE PROVIDER may carry out such notification.

42. This Agreement constitutes the entire agreement of the Parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto and the Attorney General.

43. At the end of the term of this Agreement described in Article II – Performance, Paragraph 1, the SERVICE PROVIDER will be evaluated and that evaluation may be used for evaluation of future procurements.

44. The Statement of Work and Exhibits to this Agreement are expressly incorporated by reference and, together with this Agreement, constitute the Agreement Documents. In the event of a conflict among or between the Agreement Documents, the documents shall control in the order of precedence set forth below:


1. Amendments and Change Orders to this Agreement
2. This Agreement (not including the Exhibits and documents listed below)
3. Detailed Design Documents (this comes in after DDR)
4. Attachment A - Scope of Services, with Exhibits
5. Request for Proposal
6. Exhibit B - Software License Agreement
7. Proposal

IN WITNESS WHEREOF, the authorized representatives of the SERVICE PROVIDER and the DEPARTMENT have caused their names to be signed hereon on the date first above written.

HARRIS CORPORATION

State of Nevada, acting by and through its  
DEPARTMENT OF TRANSPORTATION

DocuSigned by:  
  
 7310317EC90D430...

DocuSigned by:  
  
 04070E90D0446...  
 Director

~~Thomas Clair~~, Contracts Manager  
 Name and Title (Print)

Approved as to Legality and Form:

DocuSigned by:  
  
 02070170C0000CF...  
 Deputy Attorney General

Additional backup information for this item can be found on the City's website at -

<https://carson.org/government/meeting-information/agendas/board-of-supervisors-agendas-with-supporting-materials/2018-agendas-with-supporting-materials/11-15-18-agenda-with-supporting-materials>