

**CITY OF TEMPE**  
**PURCHASE AGREEMENT NO. 13-056**  
**EQUIPMENT/SOFTWARE/MAINTENANCE AGREEMENT FOR HARRIS PRODUCTS**

This Purchase Agreement No. 13-056 for an Equipment/Software and Training for Harris Corporation Government Communications Systems Division (GCSD) products (“Agreement”) as modified by Exhibit A (Harris Government Communications Systems Division Terms and Conditions of Sale for Wireless Equipment, Software and Services) entered into by the City of Tempe (the “City”) and Harris Corporation – Wireless Products Group (Contractor”).

The parties agree as follows:

1. Service: Contractor shall provide the following equipment, software and training as outlined below:
  - a) Harpoon-PA-Kit-2100, single band 2100.....\$18,550.00
  - b) Spray-II-U\_SW, StingRay II U Software.....\$22,000.00
  - c) Additional Training for Existing Software.....\$ 16,000.00
  - d) Applicable tax.....\$ 3,771.15
2. Pricing. Total Cost for this contract is as follows: \$60,321.15.
3. Term of Agreement. To begin upon signed execution of this agreement and continue until services are rendered.

**TERMS AND CONDITIONS**

4. Modification. No modification of this Agreement shall bind City unless City agrees to such modification in writing.
5. Title and Risk of Loss. The title and risk of loss of materials and/or goods shall not pass to City until City actually receives the materials and/or goods at the point of delivery.
6. Invoices. A separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods or completion of services and correct invoice. Payment due dates, including discount periods, will be computed from date of receipt of goods or completion of services or date of receipt of correct invoice, whichever is later. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. The City’s obligation is payable solely from funds appropriated for the purpose of acquiring the goods referred to in this Purchase Order. Payment shall be subject to the provisions of Title 35 of Arizona Revised Statutes. City’s obligation is payable solely from funds appropriated for the purpose of acquiring the materials and/or goods stated herein. All invoices issued

in reference to this Agreement shall identify and reference the Purchase Order number.

7. Inspection. All materials and/or goods are subject to final inspection and acceptance by City. Materials or goods failing to meet the requirements of this Agreement shall be at Contractor's risk and may be returned to Contractor, at Contractor's sole expense.
8. No Replacement of Defective Tender. Every tender of materials and/or goods shall fully comply with the provisions herein. If a tender is made that does not fully conform, it shall constitute a breach of this Agreement and Contractor shall not have the right to substitute a conforming tender.
9. Gratuities. This Agreement may be terminated by City if it is determined that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor to any agent or representative of the City, with a view toward securing an order or favorable treatment concerning the awarding or amending, or the making of determinations with respect to this Agreement. In the event the Agreement is terminated under this provision, City is entitled to withhold from and/or recover from Contractor, the amount of gratuity.
10. No Assignment. No right, interest or duty pursuant to this Agreement may be assigned by Contractor without the prior written permission of City.
11. Legal Compliance. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work, products, goods, facilities and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Agreement and Contractor is subject to penalties for violation(s) of this provision, including termination of this Agreement. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Agreement to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof. Additionally, in accordance with A.R.S. 35-397, the Contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan.
12. Equal Opportunity. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any

employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, creed, color, national origin, physical or mental disability, age, sex, marital status, sexual orientation, gender identity or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.

13. Liens. All goods or services delivered and labor performed under this Agreement shall be free of all liens, and if City requests, a formal release of liens shall be delivered to City.
14. Conflict of Interest. Contractor agrees to promptly disclose any and all financial and/or economic interest that may constitute a conflict of interest. Should Contractor gain any financial or economic interest in the subject project during the term of this Agreement, such interest constitutes grounds for termination of the Agreement by the City in its sole discretion. This Agreement is subject to cancellation pursuant to A.R.S. §38-311.
15. Relationship of Parties. Contractor is an independent contractor. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.
16. Licenses. Contractor shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted, as well as the materials, goods and/or services contemplated herein.
17. Insurance. Prior to commencing services under this Agreement, Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors.
18. No Agreement Award Notice or Purchase Order shall be issued to Contractor until receipt of all required insurance documents or evidence that the insurance can be placed upon execution of the contract by the City Procurement Office, meeting all requirements specified herein. In addition, prior to any renewal of Agreement, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit proof of required insurance within ten (10) calendar days after award to the City Procurement Office. Failure to comply shall result in termination of this Agreement or the award may be rescinded and another vendor selected.

19. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

19.1 Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

19.2 Other Insurance: (If applicable, see supplement.)

20. Unauthorized Firearms and Explosives. No person conducting business on City property is permitted to carry a firearm or explosive of any type. Contractor shall comply with this requirement at all times. Failure to comply with this requirement shall result in termination of the Agreement. This requirement also applies to persons who maintain a concealed weapon's permit. In addition to termination, violators and Contractor shall be subject to legal and criminal penalties.

21. Entire Agreement. This Agreement (along with the attached document titled "Harris Government Communications Systems Division Terms and Conditions of Sale for Wireless Equipment, Software and Services – Effective June 25, 2012) represents the parties' entire Agreement. If the terms of this Agreement and Attachment A conflict in any respect, the terms and conditions in Attachment A shall govern. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF TEMPE

By: \_\_\_\_\_  
Mayor

Harris Corporation

By: Brian W. Curry 08 October 2012  
Contractor Signature

Contracts Manager  
Contractor Title

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## Exhibit A

### Harris Government Communications Systems Division Terms and Conditions of Sale for Wireless Equipment, Software and Services

Effective Date: June 25, 2012

1. **Definitions.** In addition to the terms defined elsewhere, the following terms used herein have the following meanings:
  - a. **"Agreement"** means the instrument of contracting; such as a Purchase Order, or other such designation which these terms and conditions of sale for Wireless Equipment, Software and Services are incorporated.
  - b. **"Customer"** means the purchaser of Equipment, Software, or Services from Harris.
  - c. **"Date of Acceptance"** means the date when the Customer receives an item of Equipment, Software and/or Services in an undamaged or non-defective condition.
  - d. **"Environmental Laws"** means any law or regulation in any jurisdiction worldwide applicable to the Agreement and includes but it is not limited to the recycling or treatment of waste equipment including the laws implementing the WEEE Directive.
  - e. **"Equipment"** means any hardware, including components, but excluding any Software or Services.
  - f. **"Harris"** means Harris Corporation, acting through its Government Communications Systems Division.
  - g. **"Maintenance Agreement"** means a separate agreement for maintenance of the items procured hereunder; such services are not included in this Agreement.
  - h. **"Purchase Order"** means the Customer's purchase order as acknowledged by Harris on its standard acknowledgement form.
  - i. **"Purchase Price"** means the purchase price as identified in the Purchase Order.
  - j. **"Quote"** means the price quotation of Harris itemizing the purchase price and all exhibits referred to within such Quote, including but not limited to the technical proposal, technical specifications, scope of work, schedule, the Agreement and any Maintenance Agreement specifically included in the purchase price.
  - k. **"Services"** means, training, maintenance support, or other services to be provided to Customer as part of the Agreement.
  - l. **"Software"** means software and firmware, including all copies provided to Customer.
  - m. **"WEEE Directive"** means the European Union Directive on Waste Electrical Equipment and includes any and all national laws and regulations, whether civil, criminal, administrative, in any jurisdiction giving effect to that meaning including, but limited to, statutes and subordinate legislation, ordinances permits, common law, local laws, judgments, and any notices, orders, directions, instructions or decisions of any competent authority
  
2. **Restricted Use.** All Wireless Equipment and/or Software sold by Harris provides the Customer with a capability that is restricted and otherwise controlled under United States Code Title 18 §2512. Use of Equipment is strictly governed by applicable federal, state and local law associated with the intercept and monitoring of oral communications. The Customers obligation to protect information includes, but not limited to, the names of specific products, pricing, technical and performance data. Under no circumstances should any information regarding Customers purchase or use of Harris Wireless Products be posted on any public website, including procurement websites. Harris assumes no liability for any use, misuse or improper use of the Equipment and makes no representations as to Equipment suitability for any specific application. Buyer's right to transfer, sell or assign the Equipment shall be limited to authorized law enforcement and government agencies with the prior written consent of Harris.
  - a. In the event that any of the Equipment or Software purchased under this Agreement is lost or stolen, the Customer shall contact the Harris Help Desk at 1-800-358-5297 within 3 business

days. Customer shall provide the Part Number and Serial Number of the Equipment and/or Software and a summary of facts surrounding the incident. Failure to comply with this requirement may result in Harris not accepting future orders from the Customer.

3. **Proposal/Quote Validity.** Prices quoted are valid for 180 days from the date of Quote. After the expiration of the 180-day period, Harris may modify its prices or extend the validity period.
4. **Acceptance – Modification of Terms.** The Agreement will be deemed accepted by Customer upon the first to occur of (i) Customer's issuance of the Purchase Order; or (ii) Harris' commencement of performance under the Agreement. In either such event any additional or different terms proposed by Customer are rejected unless expressly approved in writing by Harris. No communication from Customer that in any way differs from or adds to the Agreement, irrespective of whether or not Harris reasonably objects thereto, will be binding upon Harris unless such different or additional terms are agreed to in writing by both Harris and Customer.
5. **Taxes.** All prices quoted are exclusive of all applicable sales, use, excise, and other taxes, duties, fees, or charges. Unless evidence of valid tax exempt status and/or resale certificate is provided by Customer prior to shipment, Harris shall add and Customer shall pay all such applicable taxes or charges levied or imposed to the invoice for the Equipment, Software, and/or Services.
6. **Shipping and Delivery.** Unless otherwise stated in the Agreement, all prices and terms are F.O.B. Destination and include freight charges. Harris may ship Equipment in multiple lots and Customer agrees to accept such multiple shipments and pay for each lot in accordance with the payment terms set forth herein.
7. **Title and Risk of Loss.** Title to and risk of loss for Equipment and Software media sold under the Agreement will pass to Customer upon receipt of equipment.
8. **Payment Terms.**
  - a. Payment for an invoice is due within 30 days from the date of the invoice.
  - b. Domestic Purchase Orders (not including Maintenance Agreements) are for shipments of Equipment, Software and/or Services to be delivered or Services to be performed within the continental United States and Canada. Harris will submit an invoice within 30 days of the Date of Acceptance of an individual delivery of Equipment, Software or performance of Services as identified in the Purchase Orders.
9. **Annual Maintenance Agreement.** Upon expiration of the warranty period, Customer may execute a separate maintenance agreement with Harris for Equipment and/or Software. Such maintenance agreements are available for a percentage of the original Purchase Prices of the Equipment and/or Software. Annual maintenance agreements include:
  - a. Customer telephone support during normal business hours, excluding holidays (Monday through Friday, Eastern Time).
  - b. Additional 12-month warranty on Equipment, with respect to the Equipment Maintenance Agreement.
  - c. For Software Maintenance Agreements Harris will provide notification of and free access to Software upgrades as defined in the maintenance agreement.

#### 10. **Equipment Return Policy.**

- a. **Equipment Damaged in Shipment.** Upon receipt of shipments, Customer should open and inspect all boxes immediately for possible freight damage. If damage is found, Customer must notify the delivery carrier within 48 hours and request an inspection from the freight carrier. After notifying the delivery carrier of damage, Customer will promptly contact Harris for further instructions. Damaged Equipment may not be returned without Harris' prior authorization. For Equipment returned under this paragraph the Date of Acceptance shall be adjusted to reflect the date repaired or undamaged Equipment is received.
- b. **Items Shipped in Error.** If the Customer receives Equipment and/or Software in error, the Customer will promptly notify Harris and Harris will provide return instructions, pay shipping costs (provided Harris' instructions are followed) and provide a Return Material Authorization (RMA). Customer will retain the Equipment's original packing material for use in return shipment to Harris.
- c. **Defective Equipment.** Equipment is provided with either Harris' standard equipment warranty or the manufacturer's standard equipment warranty. Upon discovery of a defect or other warranty-related problem, Customer shall promptly contact Harris for warranty support. Customer agrees not to return the Equipment until a service representative has issued an RMA, including a form which Customer must fill out describing the nature of the Equipment defect.
- d. **Other Reasons.** If Customer desires to return Equipment for other reasons, Customer must contact Harris for a RMA. Harris' customer service representative will require a clear statement of the reason for the return request. Upon approval of Customer's request, an RMA will be issued. Customer will not return any Equipment without an RMA. Equipment being returned may be subject to restocking and other charges. CUSTOM MANUFACTURED OR SPECIAL ORDER ITEMS ARE NOT RETURNABLE.
- e. **Upon Receipt of a Return Authorization.** RMA numbers must appear on each individual package being returned. Customer is responsible for ensuring the safe return of Equipment for the full invoice amount and all shipping costs. Harris may refuse shipments of Equipment returned without a valid RMA number. All Equipment being returned for credit must be returned in a timely manner and in good condition. If Equipment show evidence of damage, wear and tear, or if components or accessories are missing, then Harris at its sole judgment may reduce any credit agreed to prior to receipt of the Equipment.

## 11. Limited Warranty.

- a. Harris warrants the Equipment and Software ordered hereunder as of the Date of Acceptance to be substantially free from defects in material and workmanship. Harris' liability under this Limited Warranty will commence on the Date of Acceptance of the individual item of Equipment and Software and will terminate after 12 months. Written notice of any defects will be given to Harris upon discovery and Harris will promptly correct such defects by repair or replacement, at its option, without charge. Harris uses new and reconditioned parts to complete repairs and replacements under the terms of this warranty. Defective articles will not be returned to the Harris' factory without the prior written authorization of the Harris. Call 1-800-358-5297 to obtain a Return Material Authorization (RMA) number. Harris will determinate, in its sole discretion, existence and cause of the claimed defect. Specifically excluded from the terms of this Limited Warranty are any defects which occur as a result of:
  - i. Acts of God.
  - ii. Physical impact, crash or foreign object damage.
  - iii. Improper installation, use, maintenance, storage, modification or alteration by the Customer or its Customer.
  - iv. The Customer's (or its customer's) operation of the Equipment delivered under this Agreement with any accessory, equipment or part not specifically approved by the



Harris unless the Customer furnishes clear and convincing evidence that such accessory, equipment, or part was not a cause of the defect.

- v. Normal wear and tear. (The Customer recognizes that certain parts have a limited service life and will wear out through normal use.)
  - vi. Equipment or Software subjected to misuse, detrimental exposure or negligence.
- b. Harris is not responsible under this provision for defects with respect to items not provided by Harris or its subcontractors.
- c. For purposes of Harris' warranties for Equipment and Software media, a "defect" is defined as a failure of any unit or component manufactured or supplied by Harris that is not attributable to unauthorized modification or alteration, misuse or lack of care in operation, maintenance or handling. Customer's written notice of the defect must include a description of the defect with detailed information reasonably sufficient for Harris to identify the defect and determine its probable cause. Components or parts that Customer claims to be defective must be available to Harris for inspection and testing. Customer may not return defective Equipment, components or parts without first obtaining an RMA and instructions from Harris. Customer is solely responsible for U.S. Customs and Border Protection clearance or permissions for all replacement parts.
- d. CLAIMS UNDER ANY OF THE FOREGOING WARRANTIES ARE WAIVED UNLESS MADE WITHIN THE EQUIPMENT WARRANTY PERIOD IN THE CASE OF EQUIPMENT, OR WITHIN THE SOFTWARE WARRANTY PERIOD IN THE CASE OF SOFTWARE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES OR TO ASSUME ANY OTHER LIABILITIES ON HARRIS' BEHALF, UNLESS MADE OR ASSUMED IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF HARRIS.
- e. HARRIS' LIABILITY FOR BREACH OF ANY OR ALL WARRANTIES FOR EQUIPMENT, SOFTWARE, SERVICES AND LICENSED HARRIS PROGRAMS IS EXPRESSLY LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF SUCH DEFECTIVE EQUIPMENT OR SOFTWARE, LESS A REASONABLE CHARGE FOR USE. IN NO EVENT WILL HARRIS OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP. HARRIS WILL NOT BE REQUIRED TO REPAIR, REPLACE, OR REFUND THE PURCHASE PRICE OF EQUIPMENT OR SOFTWARE WHICH HAVE BEEN SUBJECTED TO NEGLECT, ACCIDENT, OR IMPROPER USE, OR WHICH HAVE BEEN ALTERED OTHER THAN BY AUTHORIZED HARRIS PERSONNEL.
- f. THIS WARRANTY CONSTITUTES HARRIS' SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING EQUIPMENT, SERVICES, AND SOFTWARE. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE), WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY; ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OR CONDITION ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR CUSTOM OR USAGE OF TRADE. CUSTOMER AGREES THAT NO CIRCUMSTANCE CAUSING CUSTOMER EXCLUSIVE AND LIMITED REMEDIES TO FAIL IN THEIR ESSENTIAL PURPOSE WILL INCREASE OR EXTEND ANY HARRIS WARRANTY.
- 12. Repairs.** To repair any Wireless products Equipment after the 12-month warranty has expired, Customer may call 1-800-358-5297 to obtain an RMA number and a quote for the estimated cost for repair.

- a. **Repair Policy.** To affect a repair on a Wireless Product, the Equipment and/or Software should be returned to the Harris' factory with a written description of the failure mode. Out-of-warranty repairs apply to any Equipment and/or Software whose standard 12-month warranty has expired, no Maintenance Agreement has been purchased and paid for, and/or any Equipment and/or Software damaged in a manner not covered by the standard warranty, including any defects which occur as identified under 11.a above. Equipment and/or Software should not be returned to the Harris' factory without an RMA. Call 1-800-358-5297 to obtain an RMA number.
- b. **Support Policy.** Harris provides free help desk support throughout the warranty period and Maintenance Agreement of purchased Equipment and/or Software. Technical support is available Monday through Friday, during normal business hours (Eastern Time) excluding holidays, via the help desk support center at 1-800-358-5297.

### 13. Software License.

- a. Subject to full payment of the Purchase Price by Customer, Harris grants to Customer a nontransferable (except as expressly provided herein), nonexclusive license to use the Software (software, firmware, and documentation) in connection with use of the Equipment purchased hereunder. The Software furnished with the Equipment will be of the latest generation available at the time of shipment of the Equipment. Harris is under no obligation to supply updates to the Software except where expressly agreed to by the parties in writing.
- b. This license is limited to object code programs and related documentation only and does not apply to any of the corresponding source code or program listings.
- c. Customer acknowledges that Harris (or its licensor) has valuable property rights in the Software, and the Software will continue to be the sole and exclusive property of Harris or its licensor. Customer will obtain no title or rights to the Software. All rights in patents, copyrights and trade secrets in relation to the Software will continue to be vested in Harris or its licensor.
- d. Customer will keep the Software confidential by affording access to the Software only to those of its employees, agents, or consultants having a need to know and having such individuals agree in writing to the obligations contained herein. In addition, Customer will employ its best efforts to prevent any unauthorized use, copying, publishing, reproducing, or disclosing of the Software and will treat the Software with the same care as its own confidential information.
- e. The Software may be used only in conjunction with the Equipment purchased hereunder. Customer may not rent, lease, transfer, network, display, or distribute the Software, nor may Customer reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the Software or create any derivative thereof, except where expressly agreed to by the parties in writing.
- f. Customer acknowledges that a violation of this Agreement would cause irreparable injury to Harris or its licensor, and that Harris or its licensor will be entitled, in addition to any other rights and remedies it may have, at law or in equity, to an injunction enjoining and restraining Customer from doing or continuing to do any such act and any other violations or threatened violations of this Agreement. Furthermore, Customer agrees that if Harris or its licensor should waive any breach of any provision of this Agreement, it will not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement. If Customer sells or otherwise disposes of Customer-owned media on which any Software is fixed, such media must be erased before any sale or disposal.

- 14. **Availability Discontinued/Last Time Buy.** Harris makes no representation about the continued availability of the Equipment and Software. Harris reserves the right, in its sole discretion, with or without notice, without incurring any liability to Customer or otherwise whether in contract or tort, to

discontinue manufacturing or selling any Equipment and Software at any time or from time to time. Harris may within its sole discretion provide Customer with an opportunity to purchase such quantities of the Equipment or Software as Customer estimates it may need ("last time buy") within 30 days of Customer's receipt of notice from Harris. Customer's last time buy rights are limited to products available in Harris' inventory at the time of Customer's request. Harris will provide warranty services and make spare parts available to Customer for a period of one (1) year after notice by Harris to Customer that the Equipment has been discontinued or for a period of 90 days after notice to Customer that the Software has been discontinued.

#### **15. Intellectual Property Indemnification.**

- a. In the event any Equipment to be furnished under this Agreement is not to be made in accordance with drawings, samples or manufacturing specifications designated by Customer, but rather is the design of Harris, Harris agrees that it will, at its own expense and at its option, defend or settle any claim, suit, or proceeding brought against Customer or any customer of Customer, based on an allegation that the Equipment furnished under this Agreement constitutes a direct or a contributory infringement of any claim of any United States patent, mask work, copyright or any other intellectual property right. This obligation will be effective only if Customer will have made all payments then due and if Harris is notified promptly of said allegation in writing and given authority, information, and assistance for the settlement or defense of said claim, suit, or proceeding. Harris will pay all damages and costs assessed in such suit or proceedings. In the event of a final adjudication by a court of competent jurisdiction that the Equipment or any part thereof infringes or violates any third party intellectual property right or if the use or sale thereof is enjoined, or if the provisions of any negotiated settlement Agreement prohibit the use of the product, Harris will at its sole option and its own expense, either:
  - i. Procure for Customer the right to continue using the Equipment;
  - ii. Replace it with a substantially equivalent non-infringing equipment;
  - iii. Modify it so it becomes non-infringing but substantially equivalent; or
  - iv. If none of the above is reasonably available, terminate the Customer's right to use the Equipment and return to the Customer a pro-rata portion of the price originally paid by Customer to Harris represented by the remaining useful life of the Equipment as a percentage of the total useful life.
- b. The foregoing indemnity does not apply to the following:
  - i. Infringement by a combination of Equipment furnished under this Agreement with other equipment not furnished hereunder unless Harris is a contributory infringer;
  - ii. Infringement resulting from changes or modifications made to or from the Equipment by the Customer;
  - iii. Any settlements of a claim, suit, or proceeding made without Harris' written consent; and
  - iv. Any Equipment to be furnished under this Agreement which is to be delivered to the United States Government.
- c. The foregoing states the entire liability of Harris with respect to infringement or violation of third party intellectual property rights in connection with Equipment furnished under this Agreement.
- d. In the event any Equipment to be furnished under this Agreement is to be made in accordance with drawings, samples or manufacturing specifications designated by Customer and is not the design of Harris, Customer will, to the fullest extent permitted by applicable law, defend and hold Harris harmless to the same extent and subject to the same requirements as set forth in (a) and (b) above. Should the Customer be the United States Government, the Customer agrees to incorporate FAR 52.227-1, Authorization and Consent, in any Purchase Order or Contract.

#### **16. Technical Data and Inventions.**

- a. Unless specifically agreed to by Harris and expressly identified and priced in the Agreement as a separate item or items to be delivered by Harris, the sale of Equipment, Software and Services under the Agreement confers on Customer no right in, license under, access to, or entitlement of any kind to any of Harris' technical data including, but not limited to design, process technology, software and drawings, or to any of Harris' inventions (whether or not patentable), irrespective of whether any such technical data or invention or any portion thereof arose out of work performed under or in connection with the Agreement, and irrespective of whether Customer has paid or is obligated to pay Harris for any part of the design or development of the Equipment, Software or Services.
- b. Harris will not be obliged to safeguard or hold confidential any data whether technical or otherwise, furnished by Customer for Harris' performance of the Agreement unless (and only to the extent that) Customer and Harris have entered into a separate written confidentiality agreement.
- c. Customer will not violate Harris' copyright of documents or Software or disclose Harris' confidential or proprietary data to others without Harris' written permission.
- d. All Inventions are and shall at all times remain Harris's confidential or proprietary information. All rights, title and interest in and to the Inventions, including all intellectual property rights, remain vested in Harris, its suppliers or licensors, subject only to the license grant below. "Inventions" shall mean and include all ideas, concepts, know-how, techniques, inventions, discoveries, improvements, specifications, designs, methods, devices, systems, reports, studies, computer software (in object or source code), programming and other documentation, flow charts, diagrams and all other information or tangible material of any nature whatsoever (in any medium and in any stage of development or completion) included in or resulting from the work contemplated hereunder, that are conceived, designed, practiced, prepared, produced or developed by Harris or any of its personnel during the course of performance of any Work.

#### **17. Excusable Delay.**

- a. Harris will be excused from performance under the Agreement and will not be liable to Customer for delay in performance attributable, in whole or in part, to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by Harris' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of nature, Customer's fault or negligence or where compliance with any applicable environmental law or regulation by Harris is not reasonably technologically or economically feasible, or would otherwise require Harris to change its manufacturing process.
- b. In the event of an excusable delay, Harris will make commercially reasonable efforts to notify Customer of the nature and extent of such delay and (1) Harris will be entitled to a schedule an extension on at least a day-for-day basis, and (2) if the delay is caused by Customer's fault or negligence, Harris will be entitled to an equitable adjustment in price under the Agreement.

**18. Termination.** Either party may terminate this Agreement if the other party defaults in a material respect under this Agreement and fails to cure such default within thirty (30) days after receiving written notice from the other party of such default. In the event of breach, the breaching party will be liable for all costs resultant from the other party's attempt to enforce its rights hereunder, including, but not limited to collection agency fees, attorney fees, court costs, etc.

#### **19. Export and Re-Export Restrictions.**

- a. Customer acknowledges that the Equipment and Software sold or licensed to it by Harris under this Agreement may be subject to export controls under the laws of the United States or Canada. Customer will not export or re-export the Equipment or Software, technology, or products manufactured from the technology that are the subject of the Agreement in violation of the export control laws of the United States or Canada. Customer will, to the fullest extent permitted by applicable law defend and hold Harris harmless from and against any loss, damage, or liability arising out of Customer's failure to comply with this Section 19. The Customer will supply to the Harris on a timely basis all necessary information and documentation requested by Harris in order to permit the Harris to export the Equipment, Software and/or Services with respect to any Purchase Order issued by the Customer hereunder, in accordance with the terms of this Agreement.
- b. To the extent any technical data is exchanged between the parties, the receiving party represents and warrants that no technical data furnished to it by the disclosing party shall be disclosed to any foreign nation, firm, or country, including foreign nationals, employed by or associated with the receiving party, nor shall any technical data be exported from the United States without first complying with all requirements of the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR), including the requirement for obtaining any export license if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting any request for authority to export any such technical data. The receiving party will, to the fullest extent permitted by applicable law defend and hold the disclosing party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the receiving party to comply with this Section 19 or with the ITAR and EAR.
- c. Harris will not provide, or be responsible for obtaining any U.S. Government export licenses/approvals to provide any technical information, data or technical services to Customer or Customer's representatives, consultants or agents who are "foreign persons" as defined in the ITAR. Customer has the sole responsibility for obtaining necessary U.S. Government export licenses/approvals for any transfer of Equipment, Software or Services to Customer hereunder to Customer's representatives, consultants or agents who are such "foreign persons." Further, Harris will not be responsible for late delivery, delay or nonperformance under this Agreement due to the U.S. Government's delay or denial of any license that is Customer's responsibility to obtain.

**20. Compliance with Waste Recycling Laws.** Customer acknowledges and agrees that the supply of the Equipment by Harris to the Customer, and the resale or re-supply of the Equipment by the Customer, may give rise to obligations for Harris and the Customer under applicable environmental laws or regulations as defined herein. The Customer will be responsible for the collection, recycling, reuse and disposal of the Equipment in compliance with such Environmental Laws. "Environmental Laws" means any law or regulation in any jurisdiction worldwide applicable to the Agreement and includes but it is not limited to the recycling or treatment of waste equipment including the laws implementing the WEEE Directive as defined hereinafter. "WEEE Directive" means the European Union Directive on Waste Electrical Equipment and will include any and all national laws and regulations, whether civil, criminal, administrative, in any jurisdiction giving effect to that meaning including, but limited to, statutes and subordinate legislation, ordinances permits, common law, local laws, judgments, and any notices, orders, directions, instructions or decisions of any competent authority. Harris may arrange for services, paid for by Customer, to recycle or dispose of Harris manufactured products in compliance with the Environmental Laws. The Customer will to the fullest extent permitted by applicable law defend and hold Harris harmless against all expenses, costs, claims, liabilities or damage of any nature incurred by any of them relating to the collection, recycling, reuse and disposal of any Equipment or otherwise arising in connection with their respective obligations under the Environmental Laws, or by reason of any failure or alleged failure by the Customer to comply with its obligations under the Environmental Laws. The Customer will provide

Harris with such compliance plans or other documents and information that Harris may reasonably request to enable Harris and its affiliates to verify and prove to any enforcement agency the compliance by the Customer and Harris of their respective obligations under this Section and/or the Environmental Laws.

- 21. Limitation of Liability.** NOT WITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL HARRIS BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE CAUSE, EVEN IF SUCH DAMAGES ARE FORESEEABLE, OR (B) LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR LOSS OF USE EVEN IF HARRIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY). IN NO EVENT WILL HARRIS' LIABILITY TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THREE TIMES THE ACTUAL PURCHASE PRICE PAID BY CUSTOMER FOR ANY EQUIPMENT, SOFTWARE OR SERVICES SUPPLIED HEREUNDER. THIS SECTION WILL SURVIVE THE TERM OR EXPIRATION OF THIS AGREEMENT. CUSTOMER AGREES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TO HOLD HARMLESS HARRIS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO CUSTOMER'S INSTALLATION, OPERATION, OR USE OF THE EQUIPMENT OR SOFTWARE.
- 22. Applicable Law, Venue, and Jurisdiction.** The Agreement, and any disputes related thereto, will be governed by and interpreted in accordance with the laws of the State of Florida, USA, without regard to conflict of law principles. The parties specifically exclude the application of the United Nations' Convention on Contracts for the International Sale of Goods to the Agreement, to the contractual relationship created under the Agreement, and to the construction, validity, enforcement, and interpretation of the Agreement. The parties agree that the exclusive venue for any action arising out of or related to the Agreement will be in the courts with the appropriate jurisdiction located in Maricopa County, Arizona, and each party irrevocably submits to the jurisdiction of each such court in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in each such court. The prevailing party in any action related to the dispute or interpretation of the Agreement will be entitled to recover its reasonable attorneys fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.
- 23. Jury Waiver.** Customer and Harris further agree, to the extent permitted by law, to waive all rights to a trial by jury of any action relating to the dispute or interpretation of the agreement, whether sounding in contract, tort, or otherwise. The parties specifically acknowledge that this waiver is made knowingly and voluntarily after an adequate opportunity to negotiate its terms and that such waiver is material consideration for the sale and purchase contemplated hereby.
- 24. Assumption of Risk.** Each party hereto acknowledges (a) the risks of its undertakings hereunder, (b) the uncertainty of the benefits and obligations hereunder, and (c) its assumption of such risks and uncertainty. Each party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion will be the basis of that party's decision to enter into the Agreement.
- 25. Reliance on Counsel and Other Advisors.** Each party has consulted such legal, financial, technical or other experts it deems necessary or desirable before entering into the Agreement. Each party represents and warrants that it has read, knows, understands and agrees with the terms of the Agreement, and the Agreement will not be construed against either party as the drafter.
- 26. Compliance with Applicable Laws.** Customer warrants that Customer will comply with any and all applicable U.S. federal, state and local laws, and will operate in good faith to comply with other laws

and regulations and industry best practices, applicable to such party's performance hereunder, and will promptly act to correct any noncompliance once identified.

## 27. General Provisions.

- a. **Publicity.** Neither party will, without the prior written consent of the other party: (a) issue any news release, public announcement, denial or confirmation of this Agreement or its subject matter; or (b) in any manner advertise or publish the fact of this Agreement.
- b. **Disputes.** The parties will to the fullest extent practical resolve disputes through collaborative procedures. To that end, any and all disputes between the parties will be quickly addressed to prevent such disputes from causing contractual or performance problems.
- c. **Assignment.** Customer will not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Section is null and void.
- d. **Enforceability.** If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will, to the extent of such invalidity, illegality, or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which will continue in full force and effect.
- e. **No Waiver.** Waiver or failure by Harris to enforce any of the terms or conditions hereunder or the delay in exercise of any of its remedies or any terms or condition herein, will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained herein.
- f. **Headings.** Headings in this Agreement are provided for the convenience only and do not affect this Agreement's construction or interpretation.
- g. **Orders Issued under Government Prime or Subcontracts.** In the event this Agreement relates to a U.S. federal government prime contract or subcontract, nothing contained in this Agreement will be construed to authorize the waiver of any provision of law as prescribed in Federal Acquisition Regulation (FAR) Part 12, or terms as set forth in the current version of FAR 52.244-6, Subcontracts for Commercial Items, if applicable.
- h. **Notices.** All notices must be in writing and will be effective when received by (1) personal delivery, (2) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (3) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all notices must be sent to Harris Corporation, PO Box 37, Mail Stop: R5/11A, Melbourne, FL 32902, Attention: Contracts Manager, or email to [wpg@harris.com](mailto:wpg@harris.com).
- i. **English Language.** The parties confirm that it is their wish that this Agreement, as well as any other documents relating hereto including notices, have been and will be drawn up in English only.
- j. **GSA.** All purchase orders issued under the General Services Administration (GSA) Schedule #GS-35F-0283J are subject to the GSA Terms and Conditions which will supersede all other terms and conditions provided.
- k. **Survivability.** The following provisions shall survive the completion or termination of this Agreement: Section 3 (Restricted Use), Section 11 (Limited Warranty), Section 13 (Software

License), Section 15 (Intellectual Property Indemnification), Section 19 (Export and Re-export Restrictions), Section 21 (Limitation of Liability), Section 22 (Applicable Law, Venue and Jurisdiction), Section 23 (Jury Waiver), and Section 27 (General Provisions).

**28. Entire Agreement.** The Agreement (as modified with The City's attached terms) supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.

**Harris GCSD**

**Brian W.  
Curry**

Digitally signed by Brian W. Curry  
DN: cn=Brian W. Curry, o=Harris  
Corporation, ou=Government  
Communications Systems,  
email=brian.curry@harris.com, c=US  
Date: 2012.10.08 09:57:11 -0400

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Brian W. Curry

\_\_\_\_\_  
Name

\_\_\_\_\_  
Contracts Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
08 October 2012

\_\_\_\_\_  
Date

**Customer**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date