

THIS PRINT COVERS CALENDAR ITEM NO. : 10.11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Central Subway

BRIEF DESCRIPTION:

Approving Contract No. SFMTA-2019-68, Radio Communication Equipment and Integration for the Central Subway Project, with Harris Corporation, to procure proprietary radio equipment to extend the new Radio System into the Central Subway and to provide system configuration, integration, and testing services, for a total amount not to exceed \$3,200,000 and a term of 36 months.



SUMMARY:

- In 2012, the SFMTA Board awarded Contract 1240, Design Build Services for the Radio System Replacement Project to Harris Corporation, to replace the obsolete and failing former Muni radio system that dated back to the early 1970s.
- The Radio System Replacement Project constructed and implemented under Contract 1240 is a hybrid design-build project, comprising facilities construction, software and hardware configuration, and vehicle and wayside equipment installation. The Radio System carries voice-over-air and emergency communication and provides real time data transmission for on-board and wayside systems.
- Under the proposed Contract No. SFMTA-2019-68 (the Contract), Harris Corporation will: (1) implement the design performed under Contract 1240 to extend the Radio System into the Central Subway; (2) furnish proprietary equipment to be installed in the Central Subway tunnels and subway stations; (3) oversee the installation of radio equipment and the supporting infrastructure installed by the Central Subway Project's construction contractor; and, (4) integrate and test the new Radio System to confirm that it meets system requirements and works seamlessly with the existing Muni radio system.
- This Contract is a sole source procurement, because the radio equipment is proprietary to Harris, is only available from Harris, and only Harris can configure the installed system to integrate fully with the existing radio system.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract No. SFMTA-2019-68 (without appendices)
3. Central Subway Final SEIS/SEIR <https://www.sfmta.com/reports/central-subway-final-seisseir>

APPROVALS:

DIRECTOR  _____
SECRETARY  _____

DATE

July 10, 2019

July 10, 2019

ASSIGNED SFMTAB CALENDAR DATE: July 16, 2019

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PURPOSE

To approve Contract No. SFMTA-2019-68, Radio Communication Equipment and Integration for the Central Subway Project, with Harris Corporation, to procure proprietary radio equipment to extend the new Radio System into the Central Subway and to provide system configuration, integration, and testing services for a total amount not to exceed \$3,200,000 and a term of 36 months.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will support the following SFMTA Strategic Plan Goals and Objectives:

Goal 2 - Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.1: Improve transit service.

Objective 2.2: Enhance and expand use of the city's sustainable modes of transportation.

Objective 2.3: Manage congestion and parking demand to support the Transit First Policy.

Goal 3 – Improve the quality of life and environment in San Francisco and the region.

Objective 3.1: Use agency programs and policies to advance San Francisco's commitment to equity.

Objective 3.2: Advance policies and decisions in support of sustainable transportation and land use principles.

Objective 3.3: Guide emerging mobility services so that they are consistent with sustainable transportation principles.

Objective 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change.

Objective 3.5: Achieve financial stability for the agency.

This item will support the following Transit First Policy Principles:

1. Improves the safe and efficient movement of people and goods.
2. Improves public transit as an attractive alternative to travel by private automobile.
8. Allocates transit investments to meet the demand for public transit generated by new public and private commercial and residential developments.
Promotes the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

The SFMTA's new radio system (Radio System) provides dispatch and emergency communications between the SFMTA's Operation Control Center and approximately 1200 revenue vehicles, 200 maintenance trucks, and 500 handheld radios used by transit operations and maintenance personnel. The Radio System provides voice-over-air and emergency communication, and is also a large data transmission system covering all on-board, dispatch, and vehicle-to-wayside communications functions. The Project to implement the new Radio System is nearly complete. That Project was a

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complex design-build technology and construction project comprising systems engineering, hardware and software configuration, systems integration, structural engineering, technology installation, and facilities construction.

The new Radio System replaced an obsolete analog radio system that dated back to the 1970s. That system had limited voice channels and bandwidth, could not be expanded, parts were no longer manufactured, and it could not integrate to other vital operating systems, such as train control and vehicle location. The new Radio System will provide much greater user, vehicle, and data carrying capacity, will be more reliable, and will serve future transit fleet and route expansion. The new Radio System will improve passenger and employee safety, and will provide better on-board passenger information services. New parts and necessary support services will be readily available from the vendor and authorized service companies. This Contract will furnish the additional radio equipment necessary to service the Central Subway.

Project History

Preliminary planning for the replacement of the old radio system began in 2003. The SFMTA contracted with Booz Allen to provide system design specifications, which the Agency used to issue an RFP in 2011 for a design-build contract to provide final designs, construct the infrastructure, install the equipment, and configure operating software for a new communications system. Following a competitive bid process, on April 17, 2012, the SFMTA Board of Directors approved SFMTA Contract No. 1240, Design Build Services for the Radio System Replacement Project, with Harris Corporation for a contract term of 1200 days, and a contract amount not to exceed \$86,648,058 for base services and \$22,572,461 for optional services, for a total Contract Amount not to exceed \$109,220,519. The SFMTA Board authorized the Director of Transportation to exercise the options listed in the Contract. The Radio System Project is nearly complete.

STAKEHOLDER ENGAGEMENT

Staff did not conduct any outreach to the public for this Contract SFMTA-2019-68, as this Contract simply extends the Radio System into the Central Subway and the new equipment will not be visible to or otherwise impact the public, but is necessary to commence Central Subway revenue service operations, and has been extensively vetted internally.

ALTERNATIVES CONSIDERED

The SFMTA Board may elect not to approve the proposed Contract. But if the Board rejects the proposed Contract, the Agency will not obtain needed proprietary radio equipment, software, and related services necessary to extend the Radio System into the Central Subway Project, as those designs, equipment and services are only available from Harris. If the Contract is not approved, completion and revenue service of the Central Subway Project will be delayed, because the new Central Subway cannot operate without a functioning radio system integrated to the main Radio System.

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FUNDING IMPACT

The Central Subway Project is funded with Federal Transit Administration (FTA) New Starts, Federal Congestion Management & Air Quality (CMAQ), State Transportation Bond Proposition 1A and 1B, State Regional Improvement Program, State Transportation Congestion Relief Program (TCRP), and Prop K Half-Cent Local Sales Tax funds. The Amendment will not increase the total Project cost of \$1.578B. The breakdown of Project funding sources and their amounts is as follows:

Source	TOTAL
5309 New Starts	\$942,200,000
CMAQ3	\$41,025,000
Prop 1A High Speed Rail Connectivity	\$61,308,000
Prop 1B- MTC	\$87,895,815
Prop 1B-SFMTA	\$219,896,185
RIP-SF/Other	\$74,248,000
TCRP	\$14,000,000
Prop K	\$137,727,000
Total	\$1,578,300,000

ENVIRONMENTAL REVIEW

The Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project. The Final SEIR was certified by the San Francisco Planning Commission in Motion No. 17668 on August 7, 2008 (Case No. 1996.281E). On August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan. The Federal Transportation Agency (FTA) adopted the record of Decision on the Final SEIS on November 26, 2008.

The proposed Contract is within the scope of the Central Subway Final SEIS/SEIR.

A copy of the Final SEIS/SEIR is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this Calendar Item. There are no subcontracting opportunities in this project, so there is no Disadvantaged Business Entity (DBE) subcontracting participation requirement for this Contract. No other approvals are required.

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RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Contract No. SFMTA-2019-68, Radio Communication Equipment and Integration for the Central Subway Project, with Harris Corporation, to procure proprietary radio equipment to extend the Radio System into the Central Subway and to provide system configuration, integration, and testing services, for a total amount not to exceed \$3,200,000 and a term of 36 months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On April 17, 2012, the SFMTA Board of Directors approved SFMTA Contract No. 1240, Radio System Replacement Project Design Build Services, with Harris Corporation, for a Contract term of 1200 calendar days and for a Contract Amount not to exceed \$86,648,058 for base services and \$22,572,461 for optional services; and,

WHEREAS, the SFMTA Radio System (Radio System) must be extended into the Central Subway to integrate the Central Subway radio system with Muni transit operations and control systems; and,

WHEREAS, The Radio System uses equipment and software that are proprietary to Harris Corporation (Harris) and are not available from other vendors, and the installation oversight, configuration, and testing services are necessary to expand the Radio System into the Central Subway; the Contract is therefore necessarily a sole source procurement; and,

WHEREAS, This Contract will be paid from existing approved funds from the Central Subway Project; and,

WHEREAS, The Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project; on August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E); on August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; The Federal Transportation Agency (FTA) adopted the record of Decision on the Final SEIS on November 26, 2008; and,

WHEREAS, The proposed Contract is within the scope of the Central Subway Final SEIS/SEIR; and,

WHEREAS, A copy of the Final SEIS/SEIR is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco and are incorporated herein by reference; now therefore be it,

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway Final SEIS/SEIR and record as a whole, and finds that the Central Subway Final SEIS/SEIR is adequate for the Board's use as the decision-making body for the actions taken herein, and incorporates the CEQA findings by this reference as though set forth in this Resolution; and, be it further

RESOLVED, That the SFMTA Board of Directors approves Contract SFMTA-2019-68, Radio Communication Equipment and Integration for the Central Subway Project, with Harris Corporation, to procure proprietary radio equipment to extend the SFMTA Radio System into the Central Subway and to provide system configuration, integration, and testing services, for a total amount not to exceed \$3,200,000 and a term of 36 months.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 16, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Contract between the City and County of San Francisco and
Harris Corporation for Radio Communications Design, Equipment, Software,
Integration and System Implementation Services for the Central Subway
Contract No. SFMTA-2019-68**

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**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Contract between the City and County of San Francisco and
Harris Corporation for Radio Communications Design, Equipment, Software,
Integration and System Implementation Services for the Central Subway
Contract No. SFMTA-2019-68**

This Contract, dated for convenience as June 28, 2019, is made in the City and County of San Francisco, State of California, by and between Harris Corporation, Communication Systems Segment, Public Safety and Professional Communications Unit, Jefferson Ridge Parkway, Lynchburg, VA 24501 (Harris) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA) for Radio Equipment and System Implementation for the Central Subway.

Recitals

- A. City and Harris entered into SFMTA Contract 1240, dated April 17, 2012, to provide to the SFMTA a CS System and related services (the Muni System), which is a specialized and proprietary voice communication, data transmission, and computer assisted dispatch and vehicle location system. The Muni System became operational in revenue service on all Muni transit vehicles in March 2019.
- B. The SFMTA is constructing the Central Subway, a new subway line in San Francisco that will run approximately 1.7 miles from 4th and King Streets, north under Fourth Street to Stockton Street, and then north under Stockton Street into Chinatown, with tunnels extending under Stockton Street into North Beach, with underground stations at Yerba Buena/Moscone Center, Union Square, and Chinatown.
- C. The Central Subway requires that a voice and data communications system (the CS System) be installed and fully functional before the SFMTA can commence train and systems testing and revenue service.
- D. The CS System will be an extension of the Muni System; the CS System will operate in the same manner as and will fully integrate with the Muni System to form a single, unified system.
- E. Harris will provide all required proprietary equipment, software, design review and implementation, system configuration, and testing services necessary for the installation (by the Construction Contactor) and implementation and testing of the CS System. Harris will review existing CS System design performed under Contract 1240. Harris will provide final CS System design and engineering, and will provide any additional as-needed oversight, inspection, and testing services to support

installation, implementation, integration of the CS System to the Muni System and Legacy Systems.

- F. The SFMTA has contracted with Tutor Perini Corporation (TPC or Construction Contractor) to construct the Central Subway stations, trackways and systems under SFMTA Contract 1300 (the Construction Contract). TPC will construct the infrastructure necessary for the installation and implementation of the CS System. TPC will furnish and install Nonproprietary Equipment, will install the Proprietary Equipment (that Harris will provide to the City), and will assist in system configuration and testing as necessary.
- G. Harris will provide Proprietary Equipment under this Contract, which the Construction Contractor will install. Harris will review of existing CS System designs, perform final CS System engineering, and provide oversight, inspection, and testing services to support CS System installation, implementation, final testing, integration to the Muni System and Legacy Systems.
- H. The Construction Contractor will construct infrastructure to support the CS System, and furnish and install Non-Proprietary Equipment.
- I. The Software and Equipment implemented in the Muni System and necessary for the CS System are proprietary to Harris. No vendor other than Harris can provide the SFMTA necessary CS System Proprietary Equipment, design review and implementation, and system configuration services for the Central Subway, which necessarily renders this Contract a sole source procurement exempt from competitive bidding.
- J. Harris represents and warrants that it has necessary experience, expertise, personnel and resources to perform the work described in this Contract for the price and within the time set out in the Contract; and
- K. This contract is a sole source contract. There are no subtracting opportunities in this project, so there is no Disadvantaged Business Entity (DBE) subcontracting participation requirement for this Contract.

NOW, THEREFORE, Harris promises and agrees, in consideration of the mutual covenants set forth in the Contract and in full knowledge and appreciation of facts and conditions stated in the Recitals above (which are material provisions and are incorporated herein), to provide the Work, Services and Deliverables as described in this Contract and its appendices for the compensation and within the time provided in this Contract to the satisfaction of the SFMTA.

Article 1 Definitions

The following definitions apply to this Contract:

- 1.1 Additional Services or Additional Work** means work and services that the SFMTA directs Harris to perform to improve or expand proprietary element(s) (Software and Equipment) of the CS System that is not Work

included in this Contract as of the Effective Date or are not Incidental Work.

- 1.2 **Affiliate** means an entity that controls, is controlled by, or is under the common control, but only for as long as such control exists; for the purposes of this Contract, control is deemed to exist when the company in question has the authority by equity ownership, debt or contract, directly or indirectly through one or more intermediaries, to direct the actions or policies of the affiliate company.
- 1.3 **Article** means a provision of this Contract designated by a number title before the decimal.
- 1.4 **CS System Schedule** means the schedule for the design, implementation and testing of the CS System approved by the SFMTA. (See Section 9.3.)
- 1.5 **CS System Substantial Completion** means the SFMTA's written determination issued to Harris in accordance with this Contract, confirming that the CS System is fully operational, has passed all required tests, and can be used for Revenue Service in the Central Subway, and for all other intended purposes. Substantial Completion does not include Reliability Testing that is performed after the Central Subway commences Revenue Service. Substantial Completion of the CS System is separate and apart from substantial completion of the Construction Contractor's work under the Construction Contract.
- 1.6 **Base Services** means the Work identified in this Contract for which the City shall pay Harris the agreed fixed-price listed in the Pricing and Milestone Payment Schedule in Appendix B.
- 1.7 **Beneficial Use** means that the CS System is at Substantial Completion (that is, the CS System is fully operational in all channels, fully integrated to the Muni System, SFMTA has accepted all CS System test results, and the CS System is ready for use in Revenue Service).
- 1.8 **CCO** means SFMTA Contract Compliance Office.
- 1.9 **City** means the City and County of San Francisco, a municipal corporation.
- 1.10 **CMD** means the Contract Monitoring Division of the City.
- 1.11 **Change Order or Contract Modification** means a properly approved and executed written amendment of this Contract approved and executed by both parties.
- 1.12 **City** means the City and County of San Francisco, a municipal corporation organized and existing under the laws of the State of California.

- 1.13 Confidential Information** means information provided by one party to another, including information or data that is proprietary to a party, subject to license, or is protected as Security Sensitive Information or as Critical Infrastructure Information that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution, the California Information Practices Act (Civil Code § 1798 et seq.), and other laws referenced in this Contract that protect the disclosure of Confidential Information.
- 1.14 Construction Contract** means the public works contract Contract No. CS-1300, between the City and Tutor Perini Corporation (the Construction Contractor, Tutor or TPC), for the construction of the stations, trackwork and systems elements of the Central Subway Project.
- 1.15 Construction Contractor** means **Tutor Perini Corporation** (also referenced as **TPC** or **Tutor**), the contractor awarded the Construction Contract.
- 1.16 Construction Schedule or Project Schedule** means the approved schedule for the performance and completion of the construction work under the Construction Contract.
- 1.17 Construction Work** means the work performed or subcontracted by the Construction Contractor that is not work proprietary to Harris or is not otherwise within Harris' scope of Work under this Contract.
- 1.18 Contract** means this contract document, including all attached appendices, and all documents and applicable City Ordinances and Mandatory City Requirements that are incorporated into this Contract by reference as provided herein.
- 1.19 Contract Administrator** means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.
- 1.20 Contract Amount** means the total amount of compensation to be paid to Harris under this Contract, as stated at Article 4 and in the Payment and Milestone Schedule set out in Appendix B.
- 1.21 Contract 1240** means the contract between the SFMTA and Harris Corporation, dated March 29, 2012, for the design, construction and implementation of the Muni System, as that system is described in that contract and in final test and acceptance reports for that system.
- 1.22 CS System** means the radio communications and CAD/AVL Systems, including all Equipment, Software and other elements of those Systems that Harris provided under this Contract.

- 1.23 CS System Schedule** means the schedule set out in Appendix D to this Contract.
- 1.24 Days** means consecutive calendar days, including weekends and holidays, unless otherwise specified.
- 1.25 Deliverables** means Harris's work product resulting from the Services that are provided by Harris to City during the course of Harris's performance of the Contract, including without limitation, the work product described in the Scope of Services attached as Appendix A.
- 1.26 Director** means the Director of Transportation, who is the chief executive officer of the SFMTA.
- 1.27 Documentation** means any user documentation, instruction manuals, warranty documentation, maintenance documentation and documentation for Software and Proprietary Equipment (including revisions and updates), design documents, as-built designs and specifications, configuration and testing records.
- 1.28 Effective Date** means the date stated in correspondence from the SFMTA informing Harris that the Controller has certified the availability of funds for this Contract as provided in Section 3.1.
- 1.29 Final Acceptance** means the written notice from the SFMTA to Harris expressly accepting the CS System issued when the Work under this the Contract has been fully performed, including all Items on punch lists, and when Harris has satisfied all requirements of this Contract (both substantive and administrative).
- 1.30 Final Designs** means the final design engineering documents, drawings and specifications created by Harris for the construction, procurement, implementation, and testing of the CS System.
- 1.31 Force Majeure means any act of God or any other cause beyond a Party's control** (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or any similar cause that delays the completion of the Work and that the Party could not have reasonably foreseen or mitigated).
- 1.32 Harris** means Harris Corporation, Harris Corporation, Communication Systems Segment, Public Safety and Professional Communications Unit, Jefferson Ridge Parkway, Lynchburg, VA 24501.
- 1.33 Incidental Work** means tasks and activities necessary for Harris' performance of the Work, Milestones, or other portions of the Work described in this Contract.

- 1.34 Indemnitee or Indemnitees** means those individuals and organizations listed in Section 10.2 to whom defense and indemnification of claim or action is owed.
- 1.35 Included Appendices** means those documents attached to this **Contract**, identified herein and that are incorporated into this Contract by reference.
- 1.36 Legacy Systems** means existing SFMTA technology systems to which the CS System must integrate or communicate.
- 1.37 Mandatory City Requirements** means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Harris.
- 1.38 Milestone** means an identified task or tasks and associated due date(s) , as set out in the CS System Schedule
- 1.39 Muni System** means the radio communications and CAD/AVL Systems, including all Equipment, Software and other elements of those Systems that Harris provided under Contract 1240.
- 1.40 Non-Proprietary Equipment** means those elements of the CS System that are not proprietary to Harris and will be supplied by the Construction Contractor as specified in this Contract.
- 1.41 Party and Parties** mean the City and Harris either collectively or individually.
- 1.42 PICO Test** means Pre and Post Installation Check Out Test performed by Contractor to confirm that the equipment meets Contract Specifications.
- 1.43 Project Manager** means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.
- 1.44 Preliminary Designs** means preliminary engineering documents, drawings and specifications created by the Designer which Harris shall review under both the Equipment and Contract.
- 1.45 Purchase Order** means the written order issued by the City to the Harris, authorizing the Effective Date as provided in Section 2.1.
- 1.46 Paragraph** means a provision of this Contract that is a subpart of a Section.
- 1.47 Proprietary Equipment** means the proprietary CS System hardware, computers, servers, configured work stations, and other CS System components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components that are proprietary to

Harris and can only be supplied by Harris, including but not limited to the CS System Equipment, Software and other CS System elements that are proprietary to and only available from Harris .

- 1.48 Revenue Service** means the commencement of passenger service operations of the Central Subway.
- 1.49 Section** means a provision of this Contract that is a subpart of an Article.
- 1.50 Services** means the Work that Harris is required to perform under this Contract.
- 1.51 SFMTA** means the San Francisco Municipal Transportation Agency, a department of the City, whose principal place of business is at 1 South Van Ness Avenue, San Francisco, California 94102, U.S.A.
- 1.52 Site(s)** means the location(s) where the Proprietary Equipment, Non-Proprietary Equipment, Software or other CS System elements are to be installed.
- 1.53 Software** means all or any part of the specific collection of computer programs and/or machine-readable instructions bundled with or embedded in the Proprietary Equipment (aka firmware) provided by Harris under this Contract or under Contract 1240, whether as a stand-alone code product or pre-installed on Proprietary Equipment (aka firmware). Software shall include any updates or upgrades to the original CS System software that was licensed to the SFMTA under Contract 1240.
- 1.54 Specifications** means the CS System construction and function requirements listed in Article 3 and set out in Appendix A to this Contract.
- 1.55 Substantial Completion** means the CS System is fully operational in all channels, fully integrated to the Muni System, SFMTA has accepted all CS System test results, and the CS System is ready for use in Revenue Service).
- 1.56 Term, Contract Term, or Contract Period** means the period commencing on the Effective Date of this Contract and terminating on the effective date stated in any termination notice or the date when the SFMTA issues to Harris Final Acceptance of the CS System.
- 1.57 Work** means the performance of the services described in Article 3, below, and Appendix A, and performance of approved Additional Work (if any).

Article 2 Term of the Contract

2.1 Subject to Section 4.1 (Certification of Funds), The term of this Contract shall commence on the later of: (i) July 16, 2019; or (ii) the Effective Date, and expire thirty-six months thereafter, unless earlier terminated as otherwise provided herein.

Article 3 Background, Summary and Performance Standards

3.1 Background. Harris provided the SFMTA the Muni System, a design-build radio and data communications system that uses proprietary software and equipment. Due to the proprietary and unique nature of the Software, Equipment other elements of the Work, and the SFMTA's requirement that the CS System operate seamlessly with the Muni System to form a single radio and data communications system, this Contract is necessarily a sole source contract.

3.2 Purpose of this Contract. The purpose of this Contract is to procure a voice and data communications system for the Central Subway that integrates with and performs to the same operating standards as Muni System, which Harris provided under SFMTA Contract 1240, as those requirements are stated in Appendix A (Scope of Services) to this Contract.

3.3 Infrastructure Construction and Equipment Installation. The Construction Contractor is responsible for the installation of the Non-Proprietary Equipment and the Proprietary Equipment, and the PICO testing of all CS System equipment it installs. Harris shall provide support to the Construction Contractor as necessary to install CS System infrastructure and implement the CS System. Said support includes oversight of installation activities and inspection of installed CS System equipment, Proprietary Equipment, and other wayside and trackway infrastructure that interfaces with the CS System. Harris shall provide information to the SFMTA that the Agency will then convey to the Construction Contractor to support the integration of the CS System to other Central Subway systems.

3.4 Summary of Services. This Contract provides the legal and procedural framework for Harris' performance of the Work, as well as the procurement of the Proprietary Equipment and Software. The Work includes all tasks, software and equipment necessary for to design, furnish, install, implement, test and certify the CS System, which includes but is not limited to design review, engineering, software programming, system configuration, system integration support, system testing, supervision, construction oversight and inspection services, and the provision of Software, firmware, servers, wayside and on-board CS System, and related Proprietary Equipment. The Work does not include Construction Work, as that term is defined in S.F. Administrative Code article 6 or California Public Works Code. In certain contexts, the term work generally refers to the performance of tasks, duties and obligations by a Party. Any reference to work, whether or not capitalized, that due to its specialized or proprietary nature can only be performed or supplied by Harris, shall be an obligation of

Harris under this Contract. Any reference to work that constitutes Construction Work, whether or not in lower case or otherwise described shall be considered an obligation of the Construction Contractor.

3.5 Specifications. Harris shall perform the Work as necessary to meet the CS System requirements set out in the Specifications listed in Appendix A.

3.6 Documentation. Harris shall provide Documentation (including as-built documentation) of the CS System as finally tested and approved.

3.7 Oversight of Construction Contractor. Harris shall provide all necessary review and oversight of work performed by the Construction Contractor that affects the CS System; Harris shall certify CS System performance; Harris shall provide continuing support as required during revenue operations.

3.8 Maintenance and Warranty. Harris intends to provide maintenance and warranty services for five (5) years following CS System Substantial Completion under a separate contract with the SFMTA. CS System warranty coverage will commence upon Beneficial Use.

3.9 Performance Standards. Harris shall ensure that the CS System performs in the same manner and to the same technical and functional standards to which the Muni System performed when the SFMTA approved Substantial Completion under Contract 1240; unless otherwise required by Appendix A.

Article 4 Compensation and Financial Matters

4.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Contract is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Harris's assumption of risk of possible non-appropriation is part of the consideration for this Contract. This Section 4.1 controls against any and all other provisions of this contract.

4.2 Guaranteed Maximum Costs. The City's payment obligation to Harris cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the

City required to honor, any offered or promised payments to Harris under this Contract in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Contract as provided in Section 15.18 (Modification of this Contract).

4.3 Contract Amount. In no event shall the amount of this Contract exceed Three Million and Two Hundred Thousand **Dollars (\$3,200,000)**, unless amended in accordance with the requirements of this Contract.

4.4 Compensation

4.4.1 The SFMTA shall compensate Harris for the Work it performs under this Contract as provided in the Pricing and Milestone Payment Schedule set out in Appendix B to this Contract.

4.4.2 Except as specifically provided in this Contract or as provided under applicable law, the City's obligations to pay and liability for payment of compensation to Harris under this Contract shall be limited to the amount stated in the Pricing and Milestone Payment Schedule set out in Appendix B. Said limitation not shall preclude Harris from seeking additional compensation under a contract claim in accordance with the terms of this Contract or a legal claim made in accordance with the requirements of California Government Code section 900 et seq. and San Francisco Administrative Code Article 10.

4.4.3 Harris shall submit its payment applications to the SFMTA pursuant to the Pricing and Milestone Payment Schedule in Appendix B of this Agreement. Harris shall include and submit supporting documentation with each application for payment.

4.4.4 No charges shall be incurred under this Contract nor shall any payments become due to Harris until reports, Services, or both, required under this Contract are received from Harris and approved by the SFMTA as being in accordance with this Contract, such approval not to be unreasonably delayed or withheld. City may reasonably withhold payment in any instance in which Harris has failed or refused to satisfy any material obligation associated with the Work provided for under this Contract. The City shall provide Harris written notice by facsimile of suspension of payment and explanation of the suspension for Harris' non-performance no later than the date payment is due.

4.4.5 For Work performed under this Contract by a subcontractor other than a Harris Affiliate, the following shall apply:

- a. The Controller is not authorized to pay invoices prior to Harris' submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Harris' invoice, the Controller will notify the SFMTA and Harris of the omission. If Harris' failure to provide HRC Progress Payment Form is not explained to the Controller's reasonable

satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

b. Following City's payment of an invoice, Harris has ten (10) days to file an affidavit using HRC Payment Affidavit verifying that all subcontractor have been paid and specifying the amount.

4.4.6 The City will make a good faith effort to pay all undisputed invoices within fifteen (15) days of receipt, but no later than 30 days. The City shall have no liability to Harris for interest due to late payment by City. In the event that City does not make payment after such thirty (30) day period or is unable to make payments after such thirty (30) day period, then Harris will have the right to suspend the Work until such payment arrangements are mutually agreed upon by the Parties.

4.4.7 Where Work or Additional Work is not paid on an agreed-lump sum basis (such as cost-reimbursement plus fixed-fee basis), reimbursement of costs and other payment arrangement shall be governed by 48 CFR Subparts 49.2 and 49.3 to the extent that those principles are in accord with the cost principles for local governments set out in the Office of Management and Budget Circular A-97.

4.4.8 Except as specifically provided for in this Contract, the City shall not be obligated to pay for Proprietary Equipment or Software, or other materials provided by Harris until said Proprietary Equipment or Software is incorporated into or otherwise used to benefit the Project. The SFMTA may in its discretion pay for certain Long Lead Items and other specifically identified materials that are stored as required under this Contract on or off the Site only as set out herein. The City may make payment for such materials or Proprietary Equipment if it is: (i) unique to the Work and approved by the City for prepayment in advance; and (ii) either stored on the Site or at an off-Site location approved in advance and in writing by the Engineer. Should the City agree to make payment for such Long Lead Items, all of the following shall apply:

a. Harris shall submit to the City proof of purchase for approved Long-Lead Proprietary Equipment and Software procurement by bills of sale, invoices, or other documentation warranting that Harris has received such materials free and clear of all liens, charges, security interests, and encumbrances.

b. Title to stored materials (including but not limited to Proprietary Equipment and Software) shall be vested in the City upon payment by City to Harris for such materials. Harris shall provide written confirmation of the transfer of title as a condition of payment. If such materials to be stored are delivered to Harris free on-board manufacturer, then, upon payment by City to Harris title shall pass to City at the manufacturer's loading dock. Harris shall obtain a negotiable warehouse receipt, endorsed over to the City, for such materials stored in an off-Site warehouse. The City shall not make any payment for such materials until endorsed receipts are delivered to the City. Harris, at no additional cost to the City, shall insure stored materials against theft, fire, loss, vandalism,

and malicious mischief covering said stored materials while in storage off-Site, in transit, and on-Site until incorporated into the Work. Harris shall deliver the policy or certificate of such insurance to the Engineer naming the City as additional insured or loss payee as applicable. Insurance shall not be cancelled without a minimum of 30 Days' notice to the SFMTA as provided in the notice requirements of this Contract, and cancellation shall not be effective until such notice thereof is given to the City.

c. The maximum prepayment for Long Lead Items shall be 75 percent of the fair market value of the material prepaid. The City shall be the sole judge of fair market value.

d. Harris shall protect stored Proprietary Equipment and materials from damage. Damaged Proprietary Equipment and materials, even though paid for, shall not be incorporated into the Work.

e. Upon reasonable notice to Harris, stored Proprietary Equipment and materials shall be available for inspection by the City.

f. Harris shall deliver stored Proprietary Equipment and materials from storage to the Site at no cost to the City.

g. After delivery of stored materials and Proprietary Equipment to the Site, if any inherent or acquired defects are discovered therein, such defective materials or Proprietary Equipment shall be removed and replaced with suitable materials at no additional cost to the City.

h. Harris shall be responsible for the loss or damage of the Proprietary Equipment and other materials provided to the Work by Harris under this Contract until said equipment and materials are delivered to the Site for installation. In the event of such loss of or damage of Proprietary Equipment and materials prior to delivery to the Site, Harris shall be responsible for replacing the lost or damaged Proprietary Equipment and materials at its own cost and shall be responsible for all delays incurred on the Project as a result of such loss or damage. The City will credit to Harris amounts subsequently recovered from an insurer for the loss of the materials.

i. Nothing in this Section shall relieve Harris of its responsibility for performing the Work, including provision of services, Proprietary Equipment and Software that conform to the requirements of the Contract.

4.4.9 **Price Validation.** The SFMTA may engage a third party auditor to confirm that the price of the Contract is fair and reasonable as required under the contracting requirements of the Federal Transit Administration of the U.S. Department of Transportation.

4.5 Grant-Funded Contracts.

4.5.1 **Disallowance.** If Harris requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Harris shall promptly refund the disallowed amount to City

upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Harris under this Contract or any other Contract between Harris and City.

4.5.2 Grant Terms. The funding for this Contract is provided to the SFMTA in full or in part by a Federal or State grant. As part a requirement said grant(s), the SFMTA must incorporate certain grant requirements into this Contract (Grant Terms). The incorporated Grant Terms are set out in in Appendix C to this Contract (Federal Contract Requirements). To the extent that any Grant Term is inconsistent with any other provisions of this Contract, the Grant Term shall apply. As required by the Grant Terms, Harris shall insert applicable provisions into each lower-tier subcontract. Harris is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

4.6 Audit and Inspection of Records. Harris agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Harris will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Contract, whether funded in whole or in part under this Contract. Harris shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Contract or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Contract shall have the same rights as conferred upon City by this Section. Harris shall include the same audit and inspection rights and record retention requirements in all subcontracts.

4.7 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Contract. Pursuant to San Francisco Administrative Code §21.35, any Harris or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Harris or subcontractor will be deemed to have submitted a false claim to the City if the Harris or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

4.8 Payment of Prevailing Wages .

4.8.1 Covered Services. The Services that Harris will perform under this Contract are not public works or construction work as those terms are defined in San Francisco Administrative Code Chapter 6 or in the California Public Works Code. Notwithstanding that purpose and intent of the parties and the nature of the CS System, the Work Harris will perform under this Contract may involve the performance of trade work covered by the provisions of San Francisco Administrative Code section 6.22(e) [Prevailing Wages] (collectively, Covered Services). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this Contract as if fully set forth herein and will apply to any Covered Services performed by Harris and its subcontractor.

4.8.2 Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Contract, are hereby incorporated as provisions of this Contract. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (OLSE) and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Harris agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Harris who perform Covered Services under this Contract. Harris further agrees as follows:

4.8.3 Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Harris shall insert in every subcontract or other arrangement, which it may make for the performance of Work, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

4.8.4 Posted Notices. As required by Section 1771.4 of the California Labor Code, Harris shall post job site notices prescribed by the California Department of Industrial Relations (DIR) at all job sites where Covered Services are to be performed.

4.8.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Harris shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked,

deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

4.8.6 **Certified Payrolls.** Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractor, who performed labor in connection with Covered Services. Harris and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Harris shall submit payrolls to the City via the reporting System selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting System at a scheduled training session. Harris and all subcontractor that will perform Covered Services must attend the training session. Harris and applicable subcontractor shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

4.8.7 **Compliance Monitoring.** Covered Services to be performed under this Contract are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Harris and any subcontractor performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (A) the Harris will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Harris by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Harris agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Harris, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the Harris shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D) the Harris shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of the Harris as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Harris. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous

provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

4.8.8 **Remedies.** Should Harris, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Harris shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Harris and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 5 Services and Resources

5.1 **Services Harris Agrees to Perform.** Harris agrees to perform the Services provided for in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Harris for, Services beyond those Services listed in Appendix A, unless Appendix A is modified as provided in Section 15.18 (Modification of this Contract).

5.2 **Qualified Personnel.** Harris shall utilize only competent personnel under the supervision of, and in the employment of, Harris (or Harris's authorized subcontractor) to perform the Services. Harris will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Harris. Harris shall commit adequate resources to allow timely completion within the project schedule specified in this Contract.

5.3 **Subcontracting.** Harris may subcontract portions of the Services only upon prior written approval of City. Harris is responsible for its subcontractor(s) throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Contract, unless inapplicable. Neither Party shall, on the basis of this Contract, contract on behalf of, or in the name of, the other Party. Any Contract made in violation of this provision shall be null and void. Harris represents that it does not intend to use any subcontractor(s) to perform the Services under this Contract. City's execution of this Contract constitutes its approval of the following subcontractor(s): Patriot Communications, LLC (which acquired AMDI).

5.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

5.4.1 Independent Contractor. For the purposes of this Article 4, Harris shall be deemed to include not only Harris, but also any agent or employee of Harris. Harris acknowledges and agrees that at all times, Harris or any agent or employee of Harris shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Work under this Contract. Harris, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Harris or any agent or employee of Harris shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Harris or any agent or employee of Harris is liable for the acts and omissions of itself, its employees and its agents.

Harris shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Harris's performing services and work, or any agent or employee of Harris providing same. Nothing in this Contract shall be construed as creating an employment or agency relationship between City and Harris or any agent or employee of Harris. Any terms in this Contract referring to direction from City shall be construed as providing for direction as to policy and the result of Harris's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the methods by which Harris performs Work under this Contract. Harris agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Harris's compliance with this section.

5.4.2 Nonperforming Personnel. Should City determine that Harris, or any agent or employee of Harris, is not performing in accordance with the requirements of this Contract, City shall provide Harris with written notice of such failure. Within five business days of Harris's receipt of such notice, and in accordance with Harris policy and procedure, Harris shall remedy the deficiency. Notwithstanding, if City believes that an action of Harris, or any agent or employee of Harris, warrants immediate remedial action by Harris, City shall contact Harris and provide Harris in writing with the reason for requesting such immediate action.

5.4.3 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Harris is an employee for purposes of collection of any employment taxes, the amounts payable under this Contract shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by

Harris which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Harris for City, upon notification of such fact by City, Harris shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Harris under this Contract (again, offsetting any amounts already paid by Harris which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Contract, Harris shall not be considered an employee of City. Notwithstanding the foregoing, Harris agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

5.5 Assignment. The Services to be performed by Harris are personal in character, and neither this Contract nor any duties or obligations hereunder may be assigned or delegated by Harris unless first approved by City by written instrument executed and approved in the same manner as this Contract. Any purported assignment made in violation of this provision shall be null and void.

Article 6 WARRANTY.

6.1 Harris warrants that it will perform the Work in a professional and workmanlike manner. Harris warrants that the Work shall meet the specifications of this Contract, will be free from defects in material and workmanship, and that Harris will repair, replace or otherwise remedy any defects in material and workmanship as provided in the Warranty and Maintenance provisions of this Contract.

6.2 The Work will be covered under a unified warranty that applies to warranty and maintenance of both the Muni System and the CS System, and the constituent parts of those systems, including but not limited to the Proprietary Equipment and Software. Harris intends to provide CS System warranty and maintenance services under a separate warranty and maintenance contract that also covers the Muni System with an expectation that it shall commence upon Beneficial Use.

6.3 Harris disclaims and the City waives any and all implied warranties, including, but not limited to, any and all implied warranties that may be applicable under the Uniform Commercial Code or other applicable statutes, including implied warranties arising by usage or custom of trade.

Article 7 SOFTWARE AND DOCUMENTATION LICENSE.

The Software license and Documentation provided to the SFMTA by Harris under Contract 1240 shall be extended to cover and include the Software and Documentation of the CS System.

Article 8 PROTECTION OF CONFIDENTIAL INFORMATION.

8.1 Proprietary Information. The Parties' respective obligations as to proprietary and confidential information are set out in the Mutual Nondisclosure Agreement executed under Contract 1240, which shall extend to Confidential Information that the parties may exchange under this Contract, which is incorporated by reference as if fully set out here. The City shall be entitled to disclose Confidential Information on a need to know basis to consultants engaged by the Agency to assist in the design, testing, certification, and maintenance of the CS System and the integration of CS System data to other SFMTA systems, provided that said consultant(s) abide by the confidentiality terms of this Contract.

8.2 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

8.3 Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

8.4 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the

phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

8.5 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

8.6 Security Sensitive Information.

8.6.1 Design Documents are Security Sensitive Information. The Drawings and related design documents that are provided to Harris to perform the Work under the Contract are Security Sensitive Information (SSI Documents), as that term is defined under applicable federal law and federal Department of Transportation security policies. 49 CFR 15 and 1520. SSI documents are Confidential Information.

The SSI Documents are identified by the markings printed on individual drawings and exterior covers of drawing sets that indicate that they are SSI Documents.

The SSI Documents show detailed designs of the Central Subway Project. Harris recognizes that access to the SSI Documents by unauthorized persons or organizations would pose significant risk of grave harm to the Central Subway Project and public safety.

8.6.2 Use of SSI Documents.

Harris shall use the SSI Documents only for the purposes of performing the Work under the Contract, and for no other purpose.

Harris shall guard the SSI Documents safe and secure at all times from disclosure to unauthorized personnel, and shall only allow access to the SSI Documents to persons with a need to know for performing the Work. When the SSI Documents are not being used to perform the Work, Harris shall keep the SSI Documents in a locked, secure area so that the SSI Documents are not physically or visually accessible to persons who are not directly involved in the preparation of Harris' Proposal for the Contract. When unattended, the SSI Documents must be secured in a locked container, office, or other restricted access area with access to the keys or combination limited to those with a need to know.

Harris shall not copy, publish, circulate or use any of the SSI Documents for any purpose other than performing the Work under this Contract, without first obtaining the SFMTA's written approval to do so.

8.6.3 **Disposal of the SSI Documents.** After Final Acceptance of the Work or earlier termination of the Contract, Harris may keep one set of the SSI Documents for its internal use only, but shall return all other sets of SSI Documents or destroy them, as follows:

SSI Documents shall be returned to:

San Francisco Municipal Transportation Agency
Attention: Trinh Nguyen
1 South Van Ness, 6th floor
San Francisco, CA 94103

If not returned to the SFMTA, the SSI Documents must be destroyed in a manner that ensures recovery of the information contained therein would be difficult, if not impossible. Any means approved for the destruction of national security classified material such as machine shredding, may be used to destroy the SSI Documents. If no such means is available, the SSI Documents may be destroyed by cutting or tearing them into small pieces and assimilating it with other waste material. Compact discs or other physical electronic media containing the SSI Documents shall be broken to pieces. Electronic files containing the SSI Documents or any portion of them shall be deleted. Harris shall certify to the SFMTA in writing that the SSI Documents have been destroyed as required herein.

8.6.4 **Liability for Failure to Secure or Misuse of the SSI Documents.** Harris shall be fully liable for any and all harm and damages that may arise from unauthorized persons or entities gaining access to the SSI Documents due to or arising from Harris' failure to adhere strictly to the requirements of this Article 12. In addition to civil liability, Harris is cautioned that violation of applicable laws and regulations concerning protection and use of Security Sensitive Information may subject Harris to federal penalties.

8.6.5 **Subcontractor.** Harris shall include the provisions of this Article 12 in any agreement with Subcontractor or Supplier that will require access to the SSI Documents, and Harris shall be responsible for its Subcontractor' and Suppliers' adherence to the requirements of this Article.

8.6.6 **Reference Documents Designated as Security Sensitive Information.** The Reference Documents and other materials designated Security Sensitive Information shall be handled in accordance with the requirements set forth in this Section.

Article 9 SCHEDULE, DELAY AND LIQUIDATED DAMAGES.

9.1 **Time Is of the Essence.** Time is of the essence for the completion of the Work. Harris shall devote sufficient resources and personnel to complete its Work within the CS System Schedule, which is appended to this Contract as Appendix D.

9.2 **Commencement of Services.** Harris' obligation to perform the Work shall begin on the Effective Date of this Contract.

9.3 CS System Schedule. Harris shall complete the Milestones for Work that do not require or are not dependent upon access to the Site as provided in the CS System Schedule (as set out in Appendix D to this Contract). Harris' performance of Work at the Site shall be based on the Construction Contractor's Three-Week Look Ahead Work Schedule (Construction Schedule). The SFMTA will work with the Construction Contractor to provide access to the Site in the Construction Schedule. Harris shall each week inform the SFMTA of the CS System Work it must next perform that requires access to the Site, a description of that Work, and an estimate of how much time on the Site it will require to complete that Work.

9.4 CS System Testing. Harris shall test the CS System as provided in Appendix A to this Contract.

9.5 Delays.

9.5.1 Delay Due to Harris. By entering into this Contract, Harris agrees that in the event completion of the Work under this Contract is delayed, the City will suffer actual damages that will be impractical or extremely difficult to determine. Harris agrees to complete the Work and achieve CS System Substantial Completion in accordance with the CS System Schedule. Requirements for CS System Testing are described in Appendix A to this Contract. Harris shall be liable for Liquidated Damages when delay solely and directly attributable to Harris delays CS System Substantial Completion, and that also results in delay to Revenue Service. For each Day of said delay, Harris shall pay to the SFMTA liquidated damages in an amount not to exceed Five Thousand Dollars (\$5,000) for every Day of such delay. Said liquidated damages are not a penalty, but are a reasonable estimate of the losses that the City will incur based on the delay, established in light of the circumstances existing at the time the City and Harris executed the Contract. The City shall subtract said amounts of liquidated damages from amounts that are due Harris. For the avoidance of doubt, notwithstanding any other provision of this Contract, Harris's liability for liquidated damages for delay to the CS System Substantial Completion shall not exceed \$160,000, as that amount may be modified by a properly approved and executed Change Order.

9.5.2 Delay Not Due to Harris. If Harris personnel are prevented from performing Work at the Site due to no fault of its own (including if the Construction Contractor unreasonably denies Harris access to the Site), when Harris has personnel in San Francisco ready and able to perform scheduled Work, and Harris cannot avoid or mitigate the losses incurred by idled personnel, the SFMTA shall compensate Harris for its actual losses, as documented by Harris and verified by the SFMTA, for each Day that personnel are so prevented from performing Work. Harris shall make every reasonable effort to avoid or mitigate the impact and costs of idled personnel by redirecting staff to perform remaining work under Contract 1240 or other work under other contracts with SFMTA.

9.5.3 **Delay Due to Regulatory Delay or Disapproval.** Where CS System Substantial Completion is caused by a regulatory agency's delay in approving the CS System for revenue service (including but not limited to the San Francisco Fire Department, the San Francisco Department of Emergency Services, and California Public Utilities Commission), and that delay is not due the CS System failing to meet the requirements of applicable regulations, the relevant Milestone dates of the CS System Schedule shall be modified accordingly such that the Milestones and CS System Schedule shall be extended for a period not less than the period of delay, and the SFMTA shall compensate Harris its reasonable costs arising from said delay, subject to proof. Delays due to the disapproval or rejection of the CS System by a regulatory agency shall be deemed a delay by Harris.

Article 10 Insurance and Indemnity.

10.1 Required Coverages. Without in any way limiting Harris's liability pursuant to the Indemnification section of this Contract, Harris must maintain in force, during the full term of the Contract, insurance in the following amounts and coverages:

10.1.1 Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

10.1.2 Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence \$4 million aggregate for Bodily Injury and Property Damage, including Contractual Liability-Personal Injury, Products and Completed Operations; and

10.1.3 Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence \$4 million aggregate, Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

10.1.4 Professional liability insurance, applicable to Harris's profession, with less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

10.1.5 Technology Errors and Omissions Liability coverage, with limits of \$5,000,000 each occurrence and each loss. The policy shall at a minimum provide coverage for the following risks:

- a. Network security liability arising from the unauthorized access to, or use of, or computer Systems, including hacker attacks; and
- b. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer System, network, or

similar computer related property and the data, software, and programs thereon.

c. Harris shall maintain in force during the full life of the Contract Cyber and Privacy Insurance with limits of \$2,000,000 per occurrence. Such insurance shall include coverage for liability caused in whole, or in part by Harris pertaining to theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

10.1.6 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

a. Include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

b. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

10.1.7 Harris shall provide 30 days' written notice, to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA Contract number and title on the cover page.

10.1.8 Should any of the required insurance be provided under a claims-made form, Harris shall maintain such coverage continuously throughout the term of this Contract and, without lapse, for a period of three years beyond the expiration of this Contract, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.

10.1.9 Not Used.

10.1.10 Should any required insurance lapse during the term of this Contract, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Contract effective on the date of such lapse of insurance.

10.1.11 Before commencing any Services, Harris shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State

of California, and that are satisfactory to City in form evidencing all coverages set forth above.

10.1.12 The Workers' Compensation policy(ies) shall be endorsed, to the extent allowed by the law, with a waiver of subrogation in favor of the City for all work performed by the Harris, its employees, agents and subcontractor.

10.1.13 If Harris will use any subcontractor(s) to provide Services, Harris shall require the subcontractor(s) that may perform work on this project to maintain reasonable and prudence insurance coverage and limits in accordance with the work performed and in line with industry custom and practice and to include the City and County of San Francisco, its officers, agents and employees and the Harris as additional insureds.

10.2 Indemnification.

10.2.1 **General Indemnity.** To the fullest extent provided by law and consistent with California Civil Code section 2782, Harris shall assume the defense of, indemnify and hold harmless the Indemnitees and other parties as may be designated by the City, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. Other parties shall be indemnified by Harris against Harris's negligent acts or omissions on a proportional basis, each party bearing liability in proportion to its degree of fault. Where a loss is caused by the sole negligence or intentional tort of an Indemnitee, the foregoing indemnification shall not be valid as to the person or entity who committed the negligent act or intentional tort.

10.2.2 **Patent and Copyright Infringement.** As more specifically provided in Section 11.2 below, Harris shall indemnify, defend and hold harmless the City and Indemnitees for any claim or action alleging that any process utilized, or Software or Equipment provided by Harris in Harris's performance of the Project violates or infringes upon any copyright or patent or otherwise violates or infringes upon a third party's intellectual property rights.

10.2.3 **Duty to Defend.** Upon Harris's awareness of any claim, threatened or pending action, whether or not such awareness is gained from the City or other means, , Harris shall defend any action, claim or suit asserting a claim covered by the provisions of this Section 10.2. Harris shall pay all costs that may be incurred by an Indemnitee, including reasonable attorney's fees.

10.2.4 **Insurance Does Not Limit Liability.** No insurance policy covering Harris's performance under this Contract shall operate to limit Harris's liabilities

under this Contract. Nor shall the amount of insurance coverage operate to limit the extent of such liabilities.

10.2.5 **City's Right to Settle Claims.** In the event that Harris and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Harris's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Harris under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

The provisions of this Section 10.2 shall survive Final Completion and termination of the Contract.

Article 11 Liability of the Parties

11.1 Liability of City. City's payment obligations under this Contract shall be limited to the payment of the compensation provided for in Section 4.3 (Contract Amount) of this Contract.

11.1.1 Special Damages.

a. **City's Liability.** Notwithstanding any other provision in this Contract, in no event shall the City, its boards and commissions, and any of their officers, agents, members, employees, and authorized representatives be liable, regardless of whether any claim is based on contract, tort, strict liability or otherwise, for any type of special, consequential, indirect or incidental damages including, but not limited to lost profits, arising out of or in connection with this Contract or the Work performed in connection with this Contract. This limit of liability applies under all circumstances including but not limited to the breach, completion, termination, suspension, cancellation or recession of the Work of this Contract, negligence or strict liability by the City, its boards and commissions, and their officers, agents, members, employees, and authorized representatives, irrespective of whether the City has been provided notice of the possibility of such damages.

b. **Harris's Liability.** Except as expressly otherwise provided herein and elsewhere in the Contract, Harris shall not be liable to the City, regardless of whether any claim is based on contract, tort, strict liability or otherwise, for any type of special, consequential, indirect or incidental damages arising out of or in connection with this Contract or the services performed in connection with this Contract, irrespective of whether the Harris has been provided notice of the possibility of such damages.

11.1.2 **Exclusion from Liability Limitations.** The limits of liability described in this Section 11.1 shall not apply to or limit: (i) Harris's obligation to pay Liquidated Damages as set forth in the Contract Documents; (ii) Harris's liability for fraud, willful misconduct or illegal or unlawful acts; (iii) Harris's obligations to defend and indemnify and Harris's liability for third party claims; (iv) Harris's liability for any type of damage to the extent such damage is required to be covered by insurance as specified herein where such insurance fails or the insurer denies coverage (v) Harris's liability for damages expressly provided for in the Contract Documents; (vi) Harris's liability for statutory damages specified in the Contract Documents; (vi) Harris's obligation to indemnify and defend City for intellectual property infringement (as provided in Section 11.2, below); (vii) treble damages for false claims or other punitive damages; or (viii) wrongful death caused by Harris.

11.1.3 **Survival.** The provisions of this Article 11 shall survive Final Completion and termination of the Contract.

11.2 Copyrights and Patents; Indemnity for Infringement.

11.2.1 In addition to the provisions applicable to patented or copyright protected Equipment, Software and processes that are set out in Contract 1240 (see Document 00823 -Software and Technology Procurement), Harris shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article, or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

11.2.2 Harris shall pay all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, material, device, Equipment, Software, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others. The cost of such royalties and license fees are included in the Contract Amount.

11.2.3 Harris shall save, defend, hold harmless, and fully indemnify the Indemnitees, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs for the actual or alleged unauthorized use or infringement of any patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right in consequence of the use by the City, or any of its boards, commissions, officers, or employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them of designs, plans, processes, firmware, Software, Equipment, and other proprietary intellectual property to be supplied or provided to the City by Harris or to be utilized by Harris in the performance of the Work.

Harris's duty to defend and indemnify the City and Indemnitees described herein shall arise irrespective of whether Harris is not the licensee, patentee or assignee or does not have the lawful right to sell or relicense the same. Said duty to defend arises upon notice of any claim, irrespective of the validity of said claim or Harris's denials or dispute of said claim.

11.2.4 If the City is enjoined from the operation or use of the CS System, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right for Items provided by Harris for the Project, Harris shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Harris cannot so procure such right within a reasonable time, Harris shall promptly, at Harris's sole expense and at no cost to the City, (1) modify the Work, consistent with the applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (2) provide CSP Items or Work that meets applicable requirements of the Contract Documents and does not infringe or violate any such intellectual property right.

11.2.5 Harris's infringement of a third party's intellectual property rights, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract. Harris shall upon notice of such breach immediately take the steps described in Section 11.2.4, above, to remedy the breach. Failure by Harris to remedy said breach within the Project schedule or other lesser reasonable time as the City may require shall constitute an event of default.

11.2.6 Harris shall inform the City immediately upon discovery if any specification or requirement set out in the Design Criteria Package requires the use of material(s), including but not limited to software, firmware, designs and plans, that is proprietary to an entity other than Harris or otherwise requires a license or other permission to use said material(s). The cost of said license shall be borne by Harris.

11.2.7 Sections 11.2.3 and 11.2.4, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) relating solely to a particular process or product of a particular manufacturer specified by the City and not provided to the Project, offered or recommended by Harris or (ii) arising from modifications to the Work by the City or its agents after Final Completion and Acceptance of the Project.

11.2.8 The provisions of this Article 11 are in addition to all other hold harmless and indemnity clauses in the Contract Documents, are not limited in any way by any other provision of the Contract, and shall survive Final Completion and termination of the Contract.

11.3 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by

Harris, or any of its subcontractor, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

Article 12 Payment of Taxes

12.1 Except for any applicable California sales and use taxes charged by Harris to City, Harris shall pay all taxes, including possessory interest taxes levied upon or as a result of this Contract, or the Services delivered pursuant hereto. Harris shall remit to the State of California any sales or use taxes paid by City to Harris under this Contract. Harris agrees to promptly provide information requested by the City to verify Harris's compliance with any State requirements for reporting sales and use tax paid by City under this Contract.

12.2 Harris agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Harris further acknowledges and agrees that City may withhold any payments due to Harris under this Agreement if Harris is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Harris, without interest, upon Harris coming back into compliance with its obligations.

12.3 Harris acknowledges that this Contract may create a possessory interest for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Harris to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

12.3.1 Harris, on behalf of itself and any permitted successors and assigns, recognizes and understands that Harris, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

12.3.2 Harris, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Contract may result in a change in ownership for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Contract. Harris accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

12.3.3 Harris, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Harris accordingly agrees on behalf of itself and its permitted successors and assigns to report

any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

12.3.4 Harris further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 13 Termination and Default

13.1 Termination for Convenience

13.1.1 City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Harris written notice of termination. The notice shall specify the date on which termination shall become effective.

13.1.2 Upon receipt of the notice of termination, Harris shall commence and perform, with diligence, all actions necessary on the part of Harris to effect the termination of this Contract on the date specified by City and to minimize the liability of Harris and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- a. Halting the performance of all Services under this Contract on the date(s) and in the manner specified by the SFMTA.
- b. Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- c. At the SFMTA's direction, assigning to City any or all of Harris's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- e. Completing performance of any Services that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.
- f. Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Contract which is in the possession of Harris and in which the SFMTA has or may acquire an interest.

13.1.3 Within 30 days after the specified termination date, Harris shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

a. The reasonable cost to Harris, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Harris's direct costs for Services. Any overhead allowance shall be separately itemized. Harris may also recover the reasonable cost of preparing the invoice.

b. A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Harris can establish, to the satisfaction of the SFMTA, that Harris would have made a profit had all Services under this Contract been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

c. The reasonable cost to Harris of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

d. A deduction for the cost of materials to be retained by Harris, amounts realized from the sale of materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

13.1.4 In no event shall the City be liable for costs incurred by Harris or any of its subcontractor after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 13.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Contract, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

13.1.5 In arriving at the amount due to Harris under this Section 13.1.2, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Harris's final invoice; (ii) any claim which the SFMTA may have against Harris in connection with this Contract; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 13.1.3; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Contract is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the

reasonable cost of performing the invoiced Services in compliance with the requirements of this Contract. The City's payment obligation under this Section 13.1 shall survive termination of this Contract.

13.2 Termination for Default; Remedies.

13.2.1 Each of the following shall constitute an immediate event of default (Event of Default) under this Contract:

a. Harris fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Contract:

3.5	Submitting False Claims.
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
13.1	Nondisclosure of Private, Proprietary or Confidential Information

b. Harris fails or refuses to perform or observe any other term, covenant or condition contained in this Contract, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Harris.

c. Harris (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Harris or of any substantial part of Harris's property; or (v) takes action for the purpose of any of the foregoing.

d. A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Harris or with respect to any substantial part of Harris's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Harris.

13.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to

terminate this Contract or to seek specific performance of all or any part of this Contract. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Harris any Event of Default; Harris shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Harris under this Contract or any other agreement between City and Harris: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Harris pursuant to the terms of this Contract; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Contract by reference, or into any other agreement with the City.

13.2.3 All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Contract shall constitute a waiver or limitation of any rights that City may have under applicable law.

13.2.4 Any notice of default must be sent to the address set forth in Article 11, and in the manner prescribed in Article 11.

13.3 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

13.4 Rights and Duties upon Termination or Expiration.

13.4.1 This Section and the following Sections of this Contract listed below, shall survive termination or expiration of this Contract:

- 3.3.2 Payment Limited to Satisfactory Services
- 3.3.7(a) Grant Funded Contracts - Disallowance
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results
- 9.2 Works for Hire
- 11.6 Dispute Resolution Procedure
- 11.7 Contract Made in California; Venue

11.8	Construction
11.9	Entire Contract
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

13.4.2 Subject to the survival of the Sections identified in Section 13.4.1 above, if this Contract is terminated prior to expiration of the term specified in Article 2, this Contract shall be of no further force or effect. Harris shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Contract, and any completed or partially completed work which, if this Contract had been completed, would have been required to be furnished to City.

Article 14 Rights In Deliverables

14.1 Ownership of Results. Any interest of Harris or its subcontractor, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Harris or its subcontractor for the purposes of this Contract, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Contract, Harris may retain and use copies for reference and as documentation of its experience and capabilities.

14.2 Works for Hire. If, in connection with Services, Harris or its subcontractor creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Harris or its subcontractor(s) under this Contract are ever determined not to be works for hire under U.S. law, Harris hereby assigns all Harris's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Harris and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 15 General Provisions

15.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 14, including enforcement and penalty provisions, are incorporated by reference into this Contract. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Contract (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

15.2 Conflict of Interest. By executing this Contract, Harris certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Contract.

15.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Harris shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Contract from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Harris is subject to the enforcement and penalty provisions in Chapter 12G.

15.4 Nondiscrimination Requirements

15.4.1 Non-Discrimination in Contracts. Harris shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Harris shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractor to comply with such provisions. Harris is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

15.4.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Harris does not as of the date of this Contract, and will not during the term of this Contract, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2

15.5 Minimum Compensation Ordinance. Harris shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Harris is subject to the enforcement and penalty

provisions in Chapter 12P. By signing and executing this Contract, Harris certifies that it complies with Chapter 12P.

15.6 Health Care Accountability Ordinance. Harris shall comply with San Francisco Administrative Code Chapter 12Q. Harris shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Harris is subject to the enforcement and penalty provisions in Chapter 12Q.

15.7 Alcohol and Drug-Free Workplace. Harris agrees in the performance of this Contract to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Harris can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

City reserves the right to deny access to, or require Harris to remove from, City facilities personnel of any Harris or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

15.8 Limitations on Contributions. By executing this Agreement, Harris acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Harris's board of directors; Harris's chairperson, chief executive officer, chief financial officer and chief operating

officer; any person with an ownership interest of more than 10% in Harris; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Harris. Harris certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

15.9 Not Used.

15.10 Not Used.

15.11 MacBride Principles Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Contract. By signing this Contract, Harris confirms that Harris has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

15.12 Federal Contract Requirements. Harris shall comply with the federal contract requirements set out in Appendix C to this Contract.

15.13 Notices to the Parties. Unless otherwise indicated in this Contract, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Albert Hoe
 Program Director, Acting
 SFMTA
 1 South Van Ness, 3rd floor
 San Francisco, CA 94102
 Albert.Hoe@sfmta.com

and

Lisa Walton
Chief Technology Officer
SFMTA
1 South Van Ness, 3rd floor
San Francisco, CA 94102
Lisa.Walton@sfmta.com

To Harris: Scott Tangeman
 Director, Public Safety Programs
 Harris Corporation, Communication Systems Segment, PSPC,
 Jefferson Ridge Parkway, Lynchburg, VA 24501

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

15.14 Compliance with Americans with Disabilities Act. Harris shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

15.15 Sunshine Ordinance. Harris acknowledges that this Contract and all records related to its formation, Harris's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

15.16 Modification of this Contract. This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by both parties and approved as required under City law and under the policy of the SFMTA Board of Directors. Harris shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Contract by more than 20% (CMD Contract Modification Form).

15.17 Dispute Resolution Procedure. Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Contract. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Harris may submit to the Contract Administrator a written request for administrative review and documentation of the Harris's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Harris of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Harris shall proceed diligently with the performance of its obligations under this Contract in accordance with the Contract and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

15.18 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative

Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Contract shall operate to toll, waive or excuse Harris's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

15.19 Contract Made in California; Venue. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in San Francisco.

15.20 Construction. All paragraph captions are for reference only and shall not be considered in construing this Contract.

15.21 Entire Contract. This Contract sets forth the entire Contract between the parties, and supersedes all other oral or written provisions. This Contract may be modified only as provided in Section 11.5 (Modification of this Contract).

15.22 Compliance with Laws. Harris shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Contract, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

15.23 Severability. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

15.24 Cooperative Drafting. This Contract has been drafted through a cooperative effort of City and Harris, and both Parties have had an opportunity to have the Contract reviewed and revised by legal counsel. No Party shall be considered the drafter of this Contract, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Contract.

Article 16 Safety Requirements

16.1 Site and Work Safety. Harris shall abide by all SFMTA site health and safety and training requirements in performance of warranty and maintenance services under this Contract, including but not limited to requirements applicable to tunnel access, work near traction power overhead lines, and wayside and trackway safety requirements and training requirements, as the SFMTA may determine those

requirements. Harris understands that the SFMTA has delegated control of the Site and responsibility for the safety of all persons on the Site to the Construction Contractor, TPC. Harris shall follow the reasonable direction and requirements of the Construction Contractor as to safety issues when Harris is performing Work at a Central Subway Site. Harris shall immediately communicate to the SFMTA's Project Manager any direction given by TPC to Harris that Harris believes to be incorrect, arbitrary, or unreasonable.

16.2 Large Vehicle Driver Safety Training. Harris agrees that before any of its employees and subcontractor drive large vehicles within the City and County of San Francisco, those employees and subcontractor shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractor of the Harris. For purposes of this section, large vehicle means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

By entering into this Contract, Harris agrees that in the event the Harris fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Harris agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Harris's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Harris. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Harris's failure to comply.

Article 17 Delivery, Title and Risk of Loss in Shipping and Storage.

17.1 Harris shall bear all risk of loss of Proprietary Equipment, including loss during shipping to a storage facility, transport to the Site, and other times in which Harris has control of said Proprietary Equipment. Harris shall for its full value insure the Proprietary Equipment against loss or damage occurring while Harris has possession and/or control of the Proprietary Equipment.

17.2 Harris shall bear all risk of loss of Software (if Software for the CS System is provided), including loss during shipping, transport, integration and installation, until the work under the Construction Contract is completed and accepted by the City.

Except as specifically provided in Appendix B to this Contract, payment for Software shall not be due until the Software or approved portion thereof has been installed and incorporated into the CS System.

17.3 Title to the Work performed (including Equipment installed) under this Contract shall vest in the SFMTA upon payment by SFMTA to Harris or available for

17.4 Title to any Software, Documentation and other confidential information or data delivered to the City under this Contract shall remain vested solely in Harris or its licensors.

Article 18 Included Appendices

The following documents, attached to this Contract as appendices, are incorporated to this Contract by reference as if fully set out herein.

Appendix A Scope of Services

Appendix B Milestone and Payment Schedule

Appendix C Federal Contract Requirements

Appendix D CS System Schedule

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first mentioned above.

CITY	HARRIS
San Francisco Municipal Transportation Agency	Harris Corporation
_____ Edward D. Reiskin Director of Transportation Authorized By: Municipal Transportation Agency Board of Directors	_____ Jason V. White Senior Manager, Contracts Harris Corporation RF Communications Division 1680 University Avenue Rochester, New York 14610 Tax ID No. 34-027-6860
Resolution No: _____	
Adopted: _____	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
Attest: _____ Roberta Boomer, Secretary	By signing this Contract, Harris acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.
Approved as to Form: Dennis J. Herrera City Attorney	
By: _____ Robert K. Stone Deputy City Attorney	City Supplier number: 0000019021

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