

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Approving the Agreement between City and County of San Francisco and L3Harris Technologies, Inc. for Radio Maintenance Services, Contract No. SFMTA-2023-56 for radio system maintenance services, software updates, and as-needed professional services to maintain Muni’s transit radio system and its constituent components, for a term of three years and a contract amount not to exceed \$6,988,372.22.

**SUMMARY:**

- The SFMTA’s Radio System provides dispatch and emergency communications between Muni’s Transportation Management Center and approximately 1200 revenue vehicles, 200 maintenance trucks, and 500 handheld radios used by transit operations and maintenance personnel. The Radio System provide supports both voice and data transmission .
- Harris Corporation designed, constructed, implemented and tested the Radio System for the Muni metro subway lines and surface vehicles under the “Radio System Replacement Project Design Build Services Agreement, SFMTA Contract 1240,” which the SFMTA awarded to Harris Corporation on or about April 17, 2012.
- Under Contract No. SFMTA-2019-68, awarded on or about July 16, 2018, Harris extended the Radio System into the Central Subway, which was then under construction.
- Under the proposed contract, L3Harris Technologies (the successor to Harris Corporation) will provide SFMTA software updates, equipment return and repair, spare equipment storage, priority technical assistance, and on-call and on-site support services for the SFMTA’s Muni Radio System, comprised of the Market Street subway, Central Subway, Muni’s surface transportation network, and maintenance facilities.
- The proposed agreement is a sole source contract, because the services SFMTA seeks to procure are proprietary to and only available from L3Harris.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. SFMTA-2023-56 L3Harris Radio Service Agreement

**APPROVALS:**

**DATE**

DIRECTOR           *Viktoriya Wise*                     June 12, 2024          

SECRETARY           *[Signature]*                     June 12, 2024          

**ASSIGNED SFMTAB CALENDAR DATE:** June 18, 2024

## **PAGE 2.**

### **PURPOSE**

Approving the Agreement between City and County of San Francisco and L3Harris Technologies, Inc. for Radio Maintenance Services, Contract No. SFMTA-2023-56 for radio system maintenance services, software updates, and as-needed professional services to maintain Muni's transit radio system and its constituent components, for a term of three years and a contract amount not to exceed \$6,988,372.22.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

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

9. Fix things before they break, and modernize systems and infrastructure

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 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 SFMTA transit operations and maintenance personnel. The Radio System provides voice-over-air and emergency communication, and is also a large data transmission system that includes on-board, dispatch, and vehicle-to-wayside communications functions.

On April 17, 2012, SFMTA awarded the "Radio System Replacement Project Design Build Services Agreement, SFMTA Contract 1240" to Harris Corporation for the design, installation, testing, and implementation of a new radio communications and data system to replace the existing radio system that was over 30 years old. Contract 1240 was awarded with a term of 1200 days and an amount not to exceed \$86,648,058. Contract 1240 was amended fifteen times for a total term of 1551 days and a total amount not to exceed \$91,667,211.33.

Contract 1240 was a complex design-build technology and construction project comprising systems engineering, hardware and software configuration, systems integration, structural engineering, technology installation, and facilities construction. The project included replacement of over 1200 vehicle radios and handsets, integration to existing legacy scheduling, vehicle location, and train control systems, and design and construction of antenna and transmitter sites throughout San Francisco and in northern San Mateo County. Harris completed the work under the Radio Contract on or about March 19, 2019. The warranty for the Radio System expired on March 18, 2021 but was

### **PAGE 3.**

subsequently extended through March 19, 2024. Following the expiration of the warranty, the Director of Transportation finally accepted the work under Contract 1240 on March 18, 2024.

On July 16, 2018, the SFMTA awarded Contract No. SFMTA-2019-68 to Harris, for an amount not to exceed \$3,200,000 and a term of 36 months, to extend the Muni Radio System into the SFMTA's Central Subway, which was then under construction. The Central Subway radio system was completed on or about November 23, 2022. The warranty for the Central Subway radio system expired on March 30, 2024. That contract was amended twice to address system changes and additional work, which extended the term 22 months and increased the contract amount \$251,291 for an amount not to exceed \$3,451,291. A third contract amendment is pending to address delay and impact claims, which if approved will increase the contract amount an additional \$496,694.50, for a total contract amount of \$3,947,985.50.

On March 14, 2024 the SFMTA awarded L3Harris Radio Short-Term Service Agreement, Contract No. SFMTA-2024-57-LOC as a sole source contract, under which Harris provided maintenance services similar to the warranty services it had provided under SFMTA Contract 1240 and Contract SFMTA-2019-68. Contract SFMTA 2024-57-LOC is a short-term bridge agreement to support the Radio System while SFMTA and Harris negotiated the proposed long term maintenance agreement; the bridge agreement will expire on June 30, 2024.

Under the proposed Maintenance Agreement, L3Harris Technologies (the successor to Harris Corporation) will provide SFMTA software updates, equipment return and repair system-wide, spare equipment storage, on-call and on-site services necessary to maintain and operate the Muni Radio System, comprised of the Market Street subway, Central Subway, Muni's surface transportation network, and maintenance facilities.

The proposed Maintenance Agreement is a sole source contract, authorized under Administrative Code section 21.30, because the services SFMTA seeks to procure are proprietary to and only available from L3Harris.

### **STAKEHOLDER ENGAGEMENT**

Staff did not conduct any outreach to the public for this Maintenance Agreement, as the activities to be performed under the Agreement have no direct impact to the public.

### **ALTERNATIVES CONSIDERED**

The SFMTA Board may reject the proposed contract. But if the Board does so, the function of the radio system may deteriorate over time, and the Agency would not have the resources, knowledge or software expertise to maintain the radio system so that it continues to operate within required reliability and availability standards necessary for transit operations.

### **FUNDING IMPACT**

**PAGE 4.**

The current Contract Amount is expected to cost \$6,988,372.22 and is being funded by Technology Operating Funds.

**ENVIRONMENTAL REVIEW**

On May 21, 2024 the SFMTA, under authority delegated by the Planning Department, determined that the proposed contract modification is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney’s Office has reviewed this Calendar Item.

The Civil Service Commission approved procuring services from L3Harris under item PSC#46298-22/23 on June 5, 2023.

No other approvals are required.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve the Agreement between City and County of San Francisco and L3Harris Technologies, Inc. for Radio Maintenance Services, Contract No. SFMTA-2023-56 for radio system maintenance services, software updates, and as-needed professional services to maintain Muni’s transit radio system and its constituent components, for a term of three years and a contract amount not to exceed \$6,988,372.22.

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, Design Build Services for the Radio System Replacement Project Design Build Services Agreement with Harris Corporation for a term of 1200 calendar days and in an amount not to exceed \$86,648,058 for base services and \$22,572,461 for optional services to design, construct infrastructure, install equipment, test and implement a new Radio System to replace the existing Muni obsolete radio system that was over 30 years old; and,

WHEREAS, Under Contract No. SFMTA-2019-68, awarded on or about July 16, 2018, for a term of 36 months and an amount not to exceed \$3,200,000, Harris extended the Radio System into the Central Subway, which was then under construction; and,

WHEREAS, The new Radio System provides voice-over-air, dispatch, data communications, and emergency communications between the Operation Control Center and approximately 1200 revenue vehicles, 200 maintenance trucks, and 500 handheld radios used by transit operations and maintenance personnel in the Muni Metro subway lines, the Central Subway, and all surface transit lines and Muni facilities; and,

WHEREAS, Under the proposed contract, L3Harris Technologies (the successor to Harris Corporation) will provide SFMTA software updates, system support services, on-site and remote trouble shooting, equipment repair and spare parts necessary to maintain and operate the SFMTA's Radio System; and,

WHEREAS, The proposed agreement is a sole source contract as authorized by Administrative Code Section 21.30, because the services SFMTA seeks to procure are proprietary to and only available from L3Harris; and,

WHEREAS, The Civil Service Commission approved procuring services from L3Harris under item PSC#46298-22/23 on June 5, 2023; and,

WHEREAS, On May 21, 2024 the SFMTA, under authority delegated by the Planning Department, determined that the proposed contract modification is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference;  
now therefore be it

RESOLVED, That the SFMTA Board of Directors approves the Agreement between City and County of San Francisco and L3Harris Technologies, Inc. for Radio Maintenance Services, Contract No. SFMTA-2023-56 for radio system maintenance services, software updates, and as-needed professional services to maintain Muni's transit radio system and its constituent components, for a term of three years and a contract amount not to exceed \$6,988,372.22.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2024.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 3<sup>rd</sup> Floor  
San Francisco, California 94103**

**Agreement between City and County of San Francisco  
and L3Harris Technologies, Inc.  
for Radio Maintenance Services  
SFMTA-2023-56**

## Table of Contents

### Article 1: Purpose of Agreement and Defined Terms 1

- 1.1 Incorporation of Recitals 1
- 1.2 Purpose and Summary of Agreement 2
- 1.3 Defined Terms 2

### Article 2: Term of the Agreement 6

### Article 3: Financial Matters 6

- 3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 6
- 3.2 Guaranteed Maximum Costs 7
- 3.3 Compensation 7
  - 3.3.1 Contract Amount..... 7
  - 3.3.2 Compensation ..... 7
  - 3.3.3 Payment Limited to Satisfactory Services ..... 7
  - 3.3.4 Invoice Format ..... 7
  - 3.3.5 Progress Payment Form ..... 8
  - 3.3.7 Payment Terms ..... 8
  - 3.3.8 Payment Process ..... 8
  - 3.3.9 Payment Does Not Constitute Acceptance ..... 8
  - 3.3.12 Withhold Payments ..... 9
- 3.4 Audit and Inspection of Records 9
- 3.5 Submitting False Claims 9
- 3.6 Payment of Prevailing Wages 9
  - 3.6.1 Covered Services..... 9
  - 3.6.2 Wage Rates ..... 10
  - 3.6.3 Subcontract Requirements ..... 10
  - 3.6.4 Posted Notices..... 10
  - 3.6.5 Payroll Records..... 10
  - 3.6.6 Certified Payrolls ..... 10
  - 3.6.7 Compliance Monitoring ..... 11
  - 3.6.8 Remedies..... 11



|   |           |
|---|-----------|
| <b>Article 4: Contractor’s Services and Resources</b>         | <b>12</b> |
| 4.1 Summary   | 12        |
| 4.2 Support Services  | 12        |
| 4.5 Qualified Personnel                                       | 12        |
| 4.6 Subcontracting  | 12        |
| 4.7 Independent Contractor; Payment of Employment Taxes and   | 12        |
| 4.7.1 Independent Contractor.....                             | 12        |
| 4.7.2 Payment of Employment Taxes and Other Expenses .....    | 13        |
| 4.8 Assignment  | 13        |
| 4.9 Services Warranty   | 14        |
| 4.11 Site and Vehicle Access.                                 | 14        |
| <b>Article 5: Insurance and Indemnity; Parties’ Liability</b> | <b>15</b> |
| 5.1 Insurance.  | 15        |
| 5.1.1 Required Coverages.....                                 | 15        |
| 5.2 Indemnity and Defense                                     | 17        |
| 5.2.1 General Indemnity and Defense.....                      | 17        |
| 5.2.2 Hazardous Waste.....                                    | 18        |
| 5.2.3 Patent and Copyright Infringement.....                  | 18        |
| 5.2.4 Duty to Defend.....                                     | 18        |
| 5.2.5 Insurance Does Not Limit Liability .....                | 18        |
| 5.2.6 City's Right to Settle Claims .....                     | 18        |
| <b>5.3 Limits of Liability</b>                                | <b>18</b> |
| 5.3.1 City’s Liability.....                                   | 19        |
| 5.3.2 Contractor’s Liability.....                             | 19        |
| 5.3.2 Reserved.....   | 19        |
| 5.3.3 Special Damages.....                                    | 19        |
| (a) City’s Liability.....                                     | 19        |
| (b) Contractor’s Liability .....                              | 19        |
| 5.3.4 Exclusion from Liability Limitations.....               | 19        |
| 5.3.5 Survival.....   | 19        |
| 5.4 Copyright and Patents; Indemnity for Infringement         | 19        |

|   |    |
|---|----|
| <b>Article 6: Payment of Taxes</b>                            | 21 |
| 6.1 Contractor to Pay All Taxes                               | 21 |
| 6.2 Possessory Interest Taxes                                 | 21 |
| 6.3 Withholding   | 22 |
| <b>Article 7: Termination and Default</b>                     | 22 |
| 7.1 Termination for Convenience                               | 22 |
| 7.2 City's Termination for Default; Remedies                  | 24 |
| 7.3 Non-Waiver of Rights                                      | 25 |
| 7.4 Rights and Duties upon Termination or Expiration          | 26 |
| 7.5 Discontinuance of Services                                | 26 |
| 7.6 This Agreement Does Not Modify Contract 1240              | 26 |
| <b>Article 8: Rights In Deliverables and Software License</b> | 27 |
| 8.1 Ownership of Results                                      | 27 |
| 8.2 Software Licenses and Use                                 | 27 |
| 8.2.1 Software and Documentation License .....                | 27 |
| 8.2.2 Third Party Software .....                              | 27 |
| 8.2.3 Software is Proprietary to Contractor .....             | 27 |
| 8.2.4 Restrictions on Use .....                               | 27 |
| 8.2.5 Disaster Recovery Copy.....                             | 28 |
| 8.2.6 Transfer of Products.....                               | 28 |
| 8.2.7 Documentation.....                                      | 28 |
| 8.2.8 Proprietary Markings .....                              | 28 |
| 8.2.9 Authorized Modification.....                            | 28 |
| 8.2.10 Third Party Programs .....                             | 28 |
| 8.2.11 Delivery.....  | 28 |
| 8.2.12 Installation.....                                      | 28 |
| 8.2.13 Risk of Loss .....                                     | 28 |
| 8.2.14 Prohibited Use.....                                    | 28 |
| 8.2.15 Survival .....   | 29 |
| 8.2.16 Warranties: Right to Grant License.....                | 29 |
| 8.2.17 Warranties: Conformity to Specifications.....          | 29 |

|   |           |
|---|-----------|
| 8.3 Documentation License   | 29        |
| <b>Article 9: Additional Requirements Incorporated by Reference</b>       | <b>29</b> |
| 9.1 Laws Incorporated by Reference  | 29        |
| 9.2 Conflict of Interest  | 29        |
| 9.3 Prohibition on Use of Public Funds for Political Activity             | 29        |
| 9.4 Consideration of Salary History                                       | 30        |
| 9.5 Nondiscrimination Requirements  | 30        |
| 9.5.1 Non Discrimination in Contracts .....                               | 30        |
| 9.5.2 Nondiscrimination in the Provision of Employee Benefits.....        | 30        |
| 9.7 Minimum Compensation Ordinance  | 30        |
| 9.8 Health Care Accountability Ordinance                                  | 31        |
| 9.9 First Source Hiring Program   | 31        |
| 9.10 Alcohol and Drug-Free Workplace                                      | 31        |
| 9.11 Limitations on Contributions   | 31        |
| 9.12 Consideration of Criminal History in Hiring and Employment Decisions | 32        |
| 9.13 Tropical Hardwood and Virgin Redwood Ban                             | 32        |
| <b>Article 10: General Provisions</b>                                     | <b>32</b> |
| 10.1 Notices to the Parties   | 32        |
| 10.2 Compliance with Americans with Disabilities Act                      | 33        |
| 10.3 Sunshine Ordinance   | 33        |
| 10.4 Modification of this Agreement                                       | 33        |
| 10.5 Dispute Resolution Procedure   | 33        |
| 10.5.1 Negotiation; Alternative Dispute Resolution .....                  | 33        |
| 10.5.2 Government Code Claim Requirement.....                             | 34        |
| 10.6 Agreement Made in California; Venue                                  | 34        |
| 10.7 Construction   | 34        |
| 10.8 Entire Agreement   | 34        |
| 10.9 Compliance with Laws   | 34        |
| 10.10 Severability  | 34        |

|  |   |    |
|--|---|----|
| 10.11                                      | Cooperative Drafting                                      | 35 |
| 10.12                                      | Order of Precedence                                       | 35 |
| 10.13                                      | Notification of Legal Requests                            | 35 |
| 10.14                                      | MacBride Principals                                       | 35 |
| 10.14                                      | MacBride Principles - Northern Ireland                    | 35 |
| <b>Article 11: SFMTA Specific Terms</b> 35 |   |    |
| 11.1                                       | Large Vehicle Driver Safety Training Requirements         | 35 |
| <b>Article 12: Data and Security</b> 36    |   |    |
| 12.1                                       | Nondisclosure of Proprietary and Confidential Information | 36 |
| 12.2                                       | Ownership of City Data                                    | 36 |
| 12.3                                       | Management of City Data and Confidential Information      | 36 |
| 12.3.1                                     | Use of City Data and Confidential Information.....        | 36 |
| 12.3.2                                     | Disposition of Confidential Information.....              | 37 |
| 12.3.3                                     | Access to City Data.....                                  | 37 |
| <b>Article 13: Included Appendices</b> 37  |   |    |

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

**Agreement between City and County of San Francisco and  
L3Harris Technologies, Inc. for Radio Maintenance Services  
Contract No. SFMTA-2023-56**

This Agreement for Radio Maintenance Services (“Agreement”) is made as of \_\_\_\_\_, in City and County of San Francisco, California, by and between L3Harris Technologies, Inc., operating by and through its RF Communications Division, located at 221 Jefferson Ridge Parkway, Lynchburg, Virginia 24501 (“Contractor” or “L3Harris”), and City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (“City” or “SFMTA”).

**Recitals**

**A.** On or about April 17, 2012, Contractor and SFMTA entered into a contract titled Radio System Replacement Project Design Build Services Agreement, SFMTA Contract 1240 (the “Radio Contract”) for the design, installation, testing and implementation of a new radio communications and data system (the “Radio System”).

**B.** Contractor completed the work under the Radio Contract on or about March 19, 2019. Contractor’s warranty for the Radio System originally expired on March 18, 2021 and was subsequently extended through March 19, 2024.

**C.** When Contractor and SFMTA negotiated, executed and performed the Radio Contract, each recognized that they were entering a commercial relationship for the expected implementation and maintenance of the Radio System. SFMTA requires professional services to maintain the Radio System and to support the Radio System’s continued operation.

**D.** On or about March 18, 2024, SFMTA and L3Harris entered into the “Short-Term Radio Maintenance Services, Contract No. SFMTA-2024-57-LOC to serve as a “bridge” agreement by which Contractor will provide SFMTA services necessary to maintain and operate the Radio System pending completion of this long-term Radio System maintenance agreement.

**E.** The Services SFMTA seeks to procure under this Agreement are proprietary to and only available from L3Harris, and this Agreement was therefore effected as a sole source contract under San Francisco Administrative Code section 21.30.

**F.** City’s Civil Service Commission approved this Contract under Civil Service action PSC# 46298 22/23, June 5, 2023.

**Now, THEREFORE, in light of the preceding Recitals, the Parties agree as follows:**

**Article 1 Purpose of Agreement and Defined Terms**

**1.1** Incorporation of Recitals. The statements set out in the above Recitals state the intent of this Agreement, and are incorporated into and made part of this Agreement.

**1.2 Purpose and Summary of Agreement.** The purpose of this Agreement is to maintain the Radio System and its constituent components with the goal that the Radio System continues to operate and perform through the Term of this Agreement in the same manner and to the same operational standards as it was operating on the Effective Date of this Agreement. The Parties intend that this Agreement will replace the Short-Term Maintenance Contract upon the expiration of the latter agreement on June 30, 2024. Contractor will provide the Services as described in Article 4 and Appendix A to this Agreement. Any services, goods, equipment, software and other products intended to service the Radio System are Services included in the Scope of Work of this Agreement, except where such Services are identified as Additional Services, in which case they are optional and may be added by modification to this Agreement or, for the convenience of the parties, by purchase order referencing this Agreement and its terms and conditions. The prices for the Services are set out in Article 3 and Appendix B.

**1.3 Defined Terms.** The following definitions of capitalized terms apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.3.1 “Additional Services” means services the SFMTA may request from Contractor that are not included in Base Services; see Appendix A, Section 7.

1.3.2 “Agreement” means this contract document, including all attached appendices, any approved amendments to this Agreement, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.3.3 “Base Services” means those Services described in Section 4 and Appendix A for which SFMTA pays L3Harris a quarterly Base Services Fee.

1.3.4 “Base Services Fee” means the quarterly (every 90 Days) payment SFMTA will make to Contractor for Contractor’s performance of the Base Services described in Section 3.3.

1.3.5 “Business Day” means every calendar Day, excluding Saturdays and Sundays and City and County of San Francisco holidays.

1.3.6 “CCO” means SFMTA Contract Compliance Office.

1.3.7 “Central Subway Radio Contract” means Contract No. SFMTA-2019-68-FTA, the agreement under which Contractor provided a radio system to utilized in the SFMTA’s Central Subway.

1.3.8 “City” means City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.3.9 “City Data” or “Data” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by the Radio System. City Data is Confidential Information.

1.3.10 “CMD” means the Contract Monitoring Division of City.

1.3.11 “Confidential Information” means information concerning the Radio System that is not public information, that is proprietary to a Party, or that if released may present a risk or threat to public safety or SFMTA transit operations, or that is otherwise not public information under applicable public records laws. Confidential Information includes but is not limited to City Data, Software, and System Documentation.

1.3.12 “Contract Administrator” means the contract administrator assigned to the Contract by SFMTA, or his or her designated agent.

1.3.13 “Contract Amount” means the value of this Agreement stated in Section 3.3 of this Agreement, as that amount may be amended by Contract Modifications approved in accordance with this Agreement and SFMTA Board of Directors policies.

1.3.14 “Contract Modification” means an amendment to this Agreement signed by the Parties’ authorized representatives and approved as required by City laws and SFMTA policies.

1.3.15 “Contractor” means L3Harris Technologies, Inc., operating by and through its Communications Systems Segment, located at 221 Jefferson Ridge Parkway, Lynchburg, Virginia 24501.

1.3.16 “Day” (whether or not capitalized) means a calendar day, unless expressly otherwise stated in the Agreement.

1.3.17 “Days” means consecutive calendar days.

1.3.18 “Deliverables” means Contractor’s work product resulting from Contractor’s performance of the Services, including without limitation, the work product described in the “Scope of Work” attached as Appendix A.

1.3.19 “Director” means the Director of Transportation of SFMTA or his or her designee.

1.3.20 “Documentation” or “System Documentation” means the technical publications relating to the use of the Software and Equipment, including Operations and Maintenance Manuals, Standard Operating Procedures, Programmer Manuals, Specifications, warranty documents, and other documents that provide reference, installation, administrative and programmer information for the System that Contractor provides to City.

1.3.21 “Effective Date” means the date Director of Transportation approves this Agreement, as indicated by the date stated on the first page of this Agreement .

1.3.22 “End-of-Life” means Equipment or Software that is no longer supported by vendors with updates, repairs, or spare parts.

1.3.23 “End-of-Support” means Equipment or Software that is no longer supported by vendors with updates, repairs, or spare parts.

1.3.24 “Equipment” means hardware, computers, servers, and other Radio System components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components supplied by Contractor under the Radio Contract (Contract No. 1240) or under the Central Subway Radio Contract (Contract No. SFMTA-2019-68-FTA).

1.3.25 “Fix” means a correction(s) to the Software that corrects an Issue.

1.3.26 “Issue” means an error, defect, or malfunction of Software or a failure or malfunction of Equipment that degrades the use of the Radio System or Software or otherwise adversely impacts the operation of the Radio System. (See Appendix A, Sections 1.11 and 1.12.)

1.3.27 “L3Harris Facility” means a Contractor facility located within five miles of San Francisco that is secure, clean and dry, and that does not require crossing a bridge (such as the Bay Bridge or Golden Gate Bridge) to access from San Francisco, where Contractor will maintain Spares. (See Appendix A, Sections 1.6, 4.2 and 4.3.)

1.3.28 “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 that impose specific duties and obligations upon Contractor.

1.3.29 “Maintained Equipment” means the System Equipment listed in Appendix C, which Contractor shall maintain under this Agreement.

1.3.30 “Microwave Backup System” means the antennas, transmission lines, amplifiers, receivers, transceivers, repeaters, signal processing equipment, uninterruptible power supplies (UPSs), communications equipment, and power supplies providing point-to-point microwave packet radio communications for redundancy with the fiber optic communications network.

1.3.31 “Notice to Proceed” means the letter SFMTA issues to Contractor indicating the Effective Date of the term of this Agreement.

1.3.32 “On-Call System Support Services” means the telephone or other remote services described in Article 4 and Appendix A, which are a subset of the Services that Contractor shall provide SFMTA under this Agreement.

1.3.33 “Party” and “Parties” mean City and Contractor, either collectively or individually.

1.3.34 “Patch” means a temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction that Contractor provides in a Software Update. Patches shall be made permanent and released in Subsequent Releases of the Software.



1.3.35 “Priority Category” means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City’s determination of the severity of the Error, Defect or Malfunction and Contractor’s reasonable analysis of the priority of the Error, Defect or Malfunction.

1.3.36 “Priority Protocol” means a priority based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures; and personnel assignment.

1.3.37 “Project Manager” means the project manager assigned to this Agreement for SFMTA, or his or her designated agent.

1.3.38 “Purchase Order” means the written order issued by City to Contractor, authorizing the Effective Date as provided in Section 3.1.

1.3.39 “Radio Contract” means SFMTA Contract 1240, and the documents referenced therein.

1.3.40 “Radio System” or “System” means the radio and data communications system, including all Equipment and Software, including vehicle on-board radios and handheld radios, that Contractor provided to SFMTA under the Radio Contract.

1.3.41 “Revenue Service” means SFMTA’s operations providing public passenger transit services via Muni buses, trolley buses, light rail vehicles, cable cars, PCC vehicles, Milano cars, and other historic transit vehicles.

1.3.42 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIII A of City’s Charter.

1.3.43 “Scope of Work” means the scope of the Services described in Appendix A to this Agreement, in accordance with the purposes stated in Section 1.1, above.

1.3.44 “Services” means the Base Services and Additional Services, which include Software, remote, on-call, and emergency services, and Equipment that L3Harris shall provide to SFMTA under this Agreement to maintain and repair the Radio System, as more specifically described in Section 4 and Appendix A (“Scope of Work”) to this Agreement.

1.3.45 “Software” means the software licensed to City under the Radio Contract, the Central Subway Radio Contract and any Updates to that Software that Contractor has provided under those agreements or will provide to City under this Agreement, or any other purchase order or contract between Contractor and SFMTA.

1.3.46 “Source Code” means the human readable compilable form of the Software to be provided by Contractor.

1.3.47 “Spares” means the Equipment that Contractor will maintain in the L3Harris Facility, as described in Appendix A, Sections 1.3, 1.6 and 4.3.

1.3.48 “System” means the Radio System.

1.3.49 “Term” means the period during which Contractor will perform the Services, commencing on the Effective Date. See Article 2.

1.3.50 “Transit Vehicle” means for purposes of this Agreement a Muni vehicle (bus, trolley bus, light rail vehicle, cable car, PCC, Milano car, or other historic vehicle) that is in Revenue Service or scheduled for Revenue Service.

1.3.51 “Update(s)” means Patches and Fixes to Software Issues that Contractor periodically provides to its customers that are necessary to repair and maintain the functionality of the Software in accordance with the Documentation. Software Updates are included in Maintenance Services.

1.3.52 “Work” means Services.

1.3.53 “Workaround” means a change in the procedures followed or end user operation of the Software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the utility and functions of the Software.

1.3.54 “Work Order” means a written agreement between the Parties under which Contractor will provide SFMTA Additional Services, including Equipment, for an agreed price, as provided in Appendix A.

## **Article 2 Term of the Agreement**

**2.1** The Term shall commence on the Effective Date and expire June 30, 2027, unless earlier terminated as otherwise provided herein.

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of 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 Agreement 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 Agreement 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 Agreement 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. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** City's payment obligation to Contractor 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 City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.4 ("Modification of this Agreement").

### **3.3 Compensation**

**3.3.1 Contract Amount.** Unless amended as provided in Section 10.4 (Modification of the Agreement), in no event shall the amount of this Agreement exceed **Six Million, Nine Hundred Eighty-Eight Thousand, Three Hundred Seventy-Two Dollars and Twenty-Two Cents (\$6,988,372.22)** (the "Contract Amount") for the Term of this Agreement. SFMTA shall pay Contractor for Work performed in accordance with this Agreement as provided in Article 4 and Appendix A.

**3.3.2 Compensation and Payment.** SFMTA shall pay Contractor the Base Service Fees for Base Services, lumpsum, quarterly three months in advance, during the Term. SFMTA shall pay Contractor for Additional Services that Contractor has performed under this Agreement as provided in Appendices A and B, lumpsum, as provided in Appendix A, Section 7, within 30 Days of receipt of Contractor's invoice for undisputed completed Additional Services or completed agreed milestones. Contractor shall provide SFMTA an invoice for all Services that accords with the Section 3.3.4 invoice requirements) for the Services covering the full Term of this Agreement.

**3.3.3 Payment Obligations Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until SFMTA approves the Work for which Contractor seeks compensation meets the requirements of this Agreement. SFMTA shall not unreasonably withhold said approval.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to City's Controller and SFMTA, and must include the Contract Progress Payment Authorization number. Contractor shall submit invoices electronically with each invoice containing the following information, as applicable:

- (a) Contract Number
- (b) Purchase Order Number
- (c) Description of the Work for which Contractor seeks compensation
- (d) Services Fee for current invoice period

- (e) Total amount invoiced.
- (f) Form 7 – CMD Progress Payment Form

**3.3.5 Progress Payment Form.** City’s Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Contractor’s invoice, SFMTA will notify Contractor of the omission. If Contractor’s failure to provide SFMTA Progress Payment Form is not explained to SFMTA’s satisfaction, SFMTA will withhold 20 percent of the payment due pursuant to that invoice until SFMTA Progress Payment Form is provided.

**3.3.6 Payment Terms.** Unless SFMTA notifies Contractor that a dispute exists, SFMTA shall endeavor to issue payment to Contractor for undisputed charges within Thirty (30) Days the date of SFMTA’s receipt of Contractor’s invoice. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

**3.3.7 No Interest or Late Charges.** No **additional** charge shall accrue against City in the event City does not make payment within any time specified in this Agreement. In no event shall City be liable for interest or late charges for any late payments.

**3.3.8 Payment Process.**

(a) City and County of San Francisco utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of City, Contractor may be required to submit invoices directly in City’s financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

**3.3.9 Payment Does Not Constitute Acceptance.** The issuing of any payment by City, or the receipt thereof by Contractor shall not constitute or imply acceptance of Work by City, waive any requirement of this Agreement, or in any way compromise or amend Contractor’s obligation to reperform or replace unsatisfactory Work although the unsatisfactory character of such Work may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be reperformed or replaced (as applicable) by Contractor without delay. No charges shall be incurred under this Agreement for Additional Services, nor shall any payments become due to Contractor until Contractor has completed said Additional Services as agreed . City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation of this Agreement. Payment for Services shall not constitute or be deemed a waiver of any provision of this Agreement.

**3.3.10 Withhold Payments.** If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, City may withhold disputed payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.4 Audit and Inspection of Records.** Contractor agrees to make available to City, during regular business hours, existing records relating to the Services provided under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records of Services provided under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement 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 Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 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 Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to City if Contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** City and Contractor do not intend that the Services shall include any work that constitutes construction trade work or Public Works as defined in San Francisco Labor and Employment Code Article 102 or applicable California laws. SFMTA will separately contract with licensed construction contractor(s) to perform any work related to the Radio System that requires a contractor's license under the California Business and Professions Code or other applicable California law. But should any of the Services be deemed by any agency with relevant regulatory authority to constitute trade work covered by the provisions of San Francisco Labor and Employment Code Article 102 or applicable State law (collectively, "Covered Services"), then the wages and benefits rates referenced in Article 102 shall apply to this Agreement. The provisions of San Francisco Labor and Employment Code

Article 102 of the Administrative Code are incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public works contracts and Covered Services, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations (“DIR”), as such prevailing wage rates may be changed during the term of this Agreement, are incorporated as provisions of this Agreement. 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 on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** San Francisco Labor and Employment Code Article 102, Contractor shall insert in every subcontract or other arrangement that it may make for the performance of Covered Services under this Agreement, 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.

3.6.4 **Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by DIR at all job sites where Covered Services (that are subject to San Francisco Administrative Code Section 6.22) are to be performed.

3.6.5 **Payroll Records.** As required by San Francisco Labor and Employment Code Article 102 and Section 1776 of the California Labor Code, Contractor 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 under this Agreement, 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 City and its authorized representatives and the DIR.

3.6.6 **Certified Payrolls.** Certified payrolls shall be prepared pursuant to San Francisco Labor and Employment Code Article 102 and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Contractor shall

submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

**3.6.7 Compliance Monitoring.** Covered Services are subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations (DIR) and/or City's Office of Labor Standards Enforcement (OLSE). Contractor and any subcontractors 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 San Francisco Labor and Employment Code Article 102. Steps and actions include but are not limited to requirements that: (i) Contractor will cooperate fully with the OLSE 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 Contractors by the Charter and Chapter 6 of the San Francisco Labor and Employment Code; (ii) Contractor agrees that the OLSE 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 Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Contractor shall prominently post at each job-site a sign informing employees that the Services are subject to City's Prevailing Wage requirements and that these requirements are enforced by the OLSE Enforcement Officer. (v) that the OLSE Enforcement Officer may audit such records of Contractor 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 Contractors. 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.

**3.6.8 Remedies.** Should Contractor, 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 Agreement, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Labor and Employment Code Article 102 and/or California Labor Code Section 1775. When certifying any payment which may become due under the terms of this Agreement, City will deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

## **Article 4 Contractor's Services and Resources**

**4.1 Summary.** The Work that Contractor may perform under this Agreement includes the performance of any Services necessary or desired by SFMTA for the maintenance, repair, or improvement of the Radio System as described in Section 1.1, above.

**4.2 Services.** Contractor shall provide the Services, as described in Appendix A ("Scope of Work"). Contractor shall submit (via email or other agreed format) written reports as requested by SFMTA regarding provision of Services. Format for the content of such reports shall be determined by SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement.

**4.3 Qualified Personnel.** Contractor shall assign only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor 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 Contractor. Contractor shall commit adequate resources to perform the Services as required by this Agreement.

**4.4 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of the City. Contractor is responsible for its subcontractors 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 Agreement, unless SFMTA determines them to be inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

### **4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses**

**4.5.1 Independent Contractor.** For the purposes of this Section 4.5, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of City at any time. Contractor or any agent or employee of Contractor 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. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor 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 Contractor's performing services and



work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor'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 method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business Days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.5.2 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 Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement 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 Contractor 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 Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor 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.

**4.6 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where Contractor is a joint venture, a joint venture partner (collectively referred to as an "Assignment"), unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. City's approval of any such Assignment is subject to Contractor demonstrating to City's reasonable satisfaction

that the proposed transferee is: (a) reputable and capable (technically, financially and otherwise) of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City. (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**4.7 Services Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. Contractor warrants that the Services provided under this Agreement will not reduce the performance or reliability of the Radio System below the its levels of performance and reliability existing as of the Effective Date of this Agreement.

**4.8 Site and Vehicle Access.** SFMTA shall provide Contractor scheduled access to SFMTA work sites, equipment rooms, control centers, and vehicles as necessary for Contractor to perform the Services. Except in exigent circumstances, Contractor shall provide SFMTA notice to schedule access to work sites and vehicles in accordance with SFMTA policies and procedures at <https://www.sfmta.com/permits/muni-construction-support-and-clearance-permit>. SFMTA will provide trackside and other necessary safety training to Contractor's personnel who perform the Services on SFMTA properties (other than SFMTA offices). Contractor shall assign only personnel to perform the Services near trackways, in wayside areas, and near traction power and other electrical lines who have received SFMTA said safety training. When an escort is required for purposes of safety, SFMTA shall provide an escort to Contractor's personnel at no cost to Contractor.

## Article 5 Insurance and Indemnity; Parties' Liability

### 5.1 Insurance

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, with no exclusion for work on or within 50 feet of railroad (heavy rail and BART) tracks or facilities.

(b) Commercial Automobile Liability Insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than Ten Million Dollars (\$10,000,000) for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of Ten Million Dollars (\$10,000,000) for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(1) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

(2) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Insurance with limits of not less than Ten Million Dollars (\$10,000,000) per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of information or data stored or transmitted in electronic form. This coverage may be included under the Technology Error and Omissions policy described in Section 5.1.1.(e).

(g) Bailee's Insurance in a form appropriate for the nature of City property (Equipment) in the care, custody, or control of Contractor, on an all-risk form, for full (100%) of the replacement value of said property.

(h) Cargo Insurance in a form appropriate for the nature of City property (Equipment) while in transit, on an all-risk form for the full (100%) of the replacement value of said property

#### 5.1.2 **Additional Insured Endorsements**

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured City and County of San Francisco, its Officers, Agents, and Employees.

(c) Contractor may satisfy the insurance coverage requirements stated in this Agreement using umbrella coverage in addition to primary policies.

5.1.3 **Waiver of Subrogation Endorsements** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and subcontractors.

#### 5.1.4 **Primary Insurance Endorsements**

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance carried or maintained by the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance carried or maintained by the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

#### 5.1.5 **Other Insurance Requirements**

(a) Thirty Days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City unless replaced without interruption without change of carrier or policy. Notices shall be sent to City address set forth in Section 10.1 ("Notices to the Parties"). All notices, certificates and endorsements shall include SFMTA contract number and title on the cover page.

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this

Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

(e) Prior to commencing the Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements and such insurance shall be placed 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to include City and County of San Francisco, its officers, agents and employees and Contractor as additional insureds.

## **5.2 Indemnity and Defense**

**5.2.1 General Indemnity and Defense.** To the fullest extent provided by law and consistent principals of comparative fault provided in California law,, Contractor 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 Contractor against Contractor'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 Indemnatee, the foregoing indemnification shall not be valid as to the person or entity who committed the negligent act or intentional tort. Contractor shall defend the City and Indemnitees to final resolution of a claim, and the City shall

compensate Contractor for City's liability, if any, and Contractor's defense costs in proportion to the City's fault.

**5.2.2 Hazardous Waste.** Contractor acknowledges that any claims, demands, losses; damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of Contractor's negligent acts or omissions while performing the work under this Agreement are expressly within the scope of the indemnity described in the foregoing paragraph, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of said indemnity.

**5.2.3 Patent and Copyright Infringement.** As more specifically provided in Section 5.4, below, Contractor 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 Contractor in Contractor's performance of the Services violates or infringes upon any copyright or patent or otherwise violates or infringes upon a third party's intellectual property rights.

**5.2.4 Duty to Defend.** Upon Contractor's awareness of any claim, threatened or pending action, whether or not such awareness is gained from the City or other means, Contractor shall defend any action, claim or suit asserting a claim covered by the provisions of this Section 5.2. Contractor shall pay all costs that may be incurred by an Indemnitee, including reasonable attorney's fees.

**5.2.5 Insurance Does Not Limit Liability.** No insurance policy covering Contractor's performance under this Agreement shall operate to limit Contractor's liabilities under this Agreement, nor shall the amount of insurance coverage operate to limit the extent of such liabilities.

**5.2.6 City's Right to Settle Claims.** In the event that Contractor 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 Contractor's performance of the Services, 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 Contractor 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 5.2 shall survive the expiration or termination of this Agreement.

### **5.3 Limits of Liability.**

5.3.1 **City's Liability.** Except as expressly provided for herein and as excepted under Section 5.3.4, the City's liability to Contractor shall not exceed the Contract Amount, as that amount may be amended from time to time by lawful modification of the Contract.

5.3.2 **Contractor's Liability.** Except as expressly provided for herein and as excepted under Section 5.3.4, Contractor's liability to the City under this Agreement shall not exceed the Contract Amount, as that amount may be amended from time to time by lawful modification of the Contract.

### 5.3.3 **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 Agreement or the Services . This limit of liability applies under all circumstances including but not limited to the breach, completion, termination, suspension, cancellation or recession of this Agreement, 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) **Contractor's Liability.** Except as expressly otherwise provided herein and elsewhere in this Agreement, Contractor 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 Agreement or the Services performed in connection with this Agreement, irrespective of whether Contractor has been provided notice of the possibility of such damages.

5.3.4 **Exclusion from Liability Limitations.** The limits of liability described in this Section 5.3 shall not apply to or limit: (a) ; (a) Contractor's liability for fraud, willful misconduct or illegal or unlawful acts; (b) Contractor's obligations to defend and indemnify and Contractor's liability for third party claims; (c) Contractor'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; (d) Contractor's liability for fines, penalties, and damages (including liquidated damages, if any) imposed by a government agency acting under authority of a statute or regulation; (e) Contractor's obligation to indemnify and defend City for intellectual property infringement (as provided in Section 5.4, below); (f) treble damages for false claims or other punitive damages; or (g) wrongful death caused by Contractor.

5.3.5 **Survival.** The provisions of this Section 5.3 shall survive expiration or termination of this Agreement.

## 5.4 **Copyrights and Patents; Indemnity for Infringement.**

5.4.1 Contractor 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 Services or incorporated into the System.

5.4.2 Contractor shall pay, and include in the Services Fees for Base Services, the costs of all royalties and license fees and assume all costs incident to the use in the performance of the Services or the incorporation into the System 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.

5.4.3 Contractor 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 Contractor or to be utilized by Contractor in the Services or incorporated into the System. Contractor's duty to defend and indemnify the City and Indemnitees described herein shall arise irrespective of whether Contractor 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 Contractor's denials or dispute of said claim.

5.4.4 If the City is enjoined from the operation or use of the System, the Software, 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 Contractor for the System, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Software and the System. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's sole expense and at no cost to the City, (1) modify the Software or System, so as to avoid infringement of any such intellectual property right, or (2) provide replacement Equipment or Software that provide the same function and does not infringe or violate any such intellectual property right.

5.4.5 Contractor'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 this Agreement. Contractor shall upon notice of such breach immediately take the steps described in Section 5.4.4, above, to remedy the breach. Failure by Contractor to remedy said breach within 90 Days or other reasonable period agreed by the Parties shall constitute an event of default.

5.4.6 Sections 5.4.3 and 5.4.4 , 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 by Contractor, offered or recommended by Contractor or (ii) arising from modifications to the System by the City..

5.4.7 The provisions of this Section 5.4 are in addition to all other hold harmless and indemnity clauses in this Agreement , are not limited in any way by any other provision of the Agreement, and shall survive expiration or and termination of this Agreement.

## **Article 6                      Payment of Taxes**

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

**6.2 Possessory Interest Taxes.** Contractor’s performance of the Services necessarily requires that it be present on SFMTA property. Contractor’s presence on SFMTA property to perform the Services that might be performed remotely is a convenience and benefit to SFMTA. Notwithstanding those facts, Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

6.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement 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 Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of 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.

6.2.3 Contractor, 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). Contractor 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.

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

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

## **Article 7 Termination and Default**

### **7.1 City Termination for Convenience**

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

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

- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by 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 SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, 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 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 SFMTA designates to be completed prior to the date of termination specified by SFMTA.

(f) Taking such action as may be necessary, or as SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

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

(a) The reasonable cost to Contractor, without profit, for all Services that Contractor performed in accordance with this Agreement prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor 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 Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

7.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFMTA, except for those costs specifically listed in Section 7.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the performance of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 7.1.3.

7.1.5 In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this

Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 7.1.4. (iv) in instances in which, in the opinion of SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

7.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

## **7.2 City's Termination for Default; Remedies**

7.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|            |                                 |
|------------|---------------------------------|
| 3.5        | Submitting False Claims         |
| 4.6        | Assignment                      |
| Article 5  | Insurance and Indemnity         |
| Article 6  | Payment of Taxes                |
| 9.9        | Alcohol and Drug-Free Workplace |
| 10.9       | Compliance with Laws            |
| Article 12 | Data and Security               |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 Days after written notice thereof from SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five Days for Contractor to cure the default.

(c) Contractor (1) is generally not paying its debts as they become due; (2) 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; (3) makes an assignment for the benefit of its creditors; (4) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (5) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (1) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (2) 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 (3) ordering the dissolution, winding-up or liquidation of Contractor.

7.2.2 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 Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor 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 Contractor under this Agreement or any other agreement between City and Contractor: (a) all damages, losses, costs or expenses incurred by City as a result of an Event of Default. (b) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; (c) any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City. This Section 7.2.2 shall survive termination of this Agreement.

7.2.3 All remedies provided for in this Agreement 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 Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

7.2.4 Any notice of default must be sent to the address and in the manner provided in Section 10.1.

**7.3 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.

## **7.4 Rights and Duties upon Termination or Expiration**

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

|            |  |
|------------|--|
| 3.3        | Compensation                                     |
| 3.4        | Audit and Inspection of Records                  |
| 3.5        | Submitting False Claims                          |
| 4.7        | Independent Contractor; Payment of Taxes         |
| Article 5  | Insurance and Indemnity; Parties' Liability      |
| Article 6  | Payment of Taxes                                 |
| 7.1.6      | Payment Obligation (Termination for Convenience) |
| 7.2.       | Default Remedies                                 |
| 8.1        | Ownership of Results                             |
| 8.2        | Software Licenses and Use                        |
| 8.3        | Documentation                                    |
| 10.5       | Dispute Resolution Procedure                     |
| 10.6       | Agreement Made in California; Venue              |
| 10.7       | Construction                                     |
| 10.8       | Entire Agreement                                 |
| 10.9       | Compliance with Laws                             |
| 10.10      | Severability                                     |
| 10.11      | Cooperative Drafting                             |
| Article 12 | Data and Security                                |

7.4.2 Subject to the survival of the Sections identified in Section 7.4.1, above, if this Agreement is terminated prior to expiration of the Term specified in Article 2, this Agreement shall be of no further force or effect. Contractor 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 Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

**7.5 Discontinuance of Services.** Contractor agrees that in the event it ceases to sell radio communication systems for transit applications, or otherwise ceases to market and/or provide proprietary Software, Equipment or maintenance Services for the System, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, Contractor shall provide notice to SFMTA and make available for City to purchase at reasonable commercial rates all proprietary Equipment (except for Equipment which, because it has reached End-of-Life or End-of-Support, is no longer available) that SFMTA deems is necessary for the Agency to continue to operate the System for a period of not less than three years, to provide the SFMTA sufficient time to budget, plan, and acquire a replacement to the System.

**7.6 This Agreement Does Not Modify Contract 1240.** This Agreement does not modify or waive any provision of the Radio Contract, (SFMTA Contract 1240), or any provision

of the Radio Contract that expressly survives or otherwise by its terms survives the termination or expiration of the Radio Contract.

## **Article 8 Rights In Deliverables and Software Licenses**

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

### **8.2 Software Licenses and Use**

**8.2.1 Software and Documentation License.** The City is granted the same perpetual, non-exclusive, non-transferrable enterprise license rights under this Agreement as were granted to the City by the Radio Contract to use the Software and Documentation for the continued operation and maintenance of the Radio System. the continued operation and maintenance of the Radio System, and for no other purpose.

**8.2.2 Third-Party Software.** City and County of San Francisco shall be listed as the licensee or authorized end-user on the license or end-user agreement for Software provided under this Agreement, where applicable, as stated in Appendix A. All such licenses for such third-party software that Contractor provides to City under this Agreement shall grant to City a non-exclusive, non-transferable, perpetual, license to use said Software for the operation and maintenance of the Radio System. City shall have no right to grant sublicenses.

#### **8.2.3 Software is Proprietary to Contractor.**

(a) Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) of the Software to City.

(b) Notwithstanding anything to the contrary contained in this Agreement, it is understood that City receives no title or ownership rights to Software that Contractor provides City under this Agreement, and all such rights shall remain with Contractor or its suppliers.

(c) City agrees that the Software provided to it by Contractor under this Agreement shall, as between the Parties, be treated as proprietary and a trade secret of Contractor or its suppliers and be subject to the provisions of Article 13 (“Data and Security”).

**8.2.4 Restrictions on Use.** City is authorized to use the Software only for City’s municipal purposes. City agrees that it will, through its best efforts, not use or permit the Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity not authorized by this Agreement, to use the Software.

**8.2.5 Disaster Recovery Copy.** For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Software for archival purposes and use such archival copy to restore use of the Software on a site owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which City cannot operate the Software on the existing site.

**8.2.6 Transfer of Products.** City may move the Software and supporting materials to another City site.

**8.2.7 Documentation.** Contractor shall provide the SMFTA with a digital copy of the Documentation for all Software it provides SFMTA under this Agreement. Contractor grants to City permission to duplicate all printed Documentation for City's municipal use.

**8.2.8 Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Software or any related materials or Documentation.

**8.2.9 Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces ("APIs"), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Agreement to ownership of any APIs, macros or other interfaces developed by or at the direction of City.

**8.2.10 Third-Party Programs.** Contractor has no general objection to City's use of third-party programs in conjunction with the Software licensed under this Agreement. Contractor recognizes that City has and will license third party programs that City will use with Contractor's products. Based on information provided to Contractor as to the Effective Date, Contractor agrees that such use does not constitute an unauthorized modification or violate the licenses granted under this Agreement.

**8.2.11 Delivery.** Contractor shall deliver one copy of each of the Software products (including Updates) in computer readable form, as provided in Appendix A.

**8.2.12 Installation.** SFMTA will install the Software products and equipment, except when SFMTA may request Contractor to perform installation as Services .

**8.2.13 Risk of Loss.** Contractor shall replace any Software provided under this Agreement if any of the Software is lost or damaged during shipment, at no additional charge to City.

**8.2.14 Prohibited Use.** City shall not:

**8.2.15** make any copies of Software provided under this Agreement or parts thereof, except for archival back up purposes and when making copies as permitted



herein, shall transfer to the copy/copies any copyright or proprietary legends or other marking on said Software; or use said Software for any other purpose than permitted in this Section; or translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to said Software.

8.2.16 **Survival.** The obligations of City under this Section shall survive the termination or expiration of this Agreement.

8.2.17 **Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Software to City.

8.2.18 **Warranties: Conformity to Specifications.** Contractor warrants that when the Software specified and all updates and improvements to the Software that Contractor provides under this Agreement will be free from defects as to design, material, and workmanship and will perform in accordance with Contractor's published specifications.

**8.3 Documentation License.** Contractor shall supply Documentation to City for Equipment and Software that Contractor provides to SFMTA under this Agreement. City shall have the right to use the Documentation for the operation and maintenance of the Radio System. City may make limited copies of the Documentation to the extent necessary to maintain one (1) archive version and as required to train its employees in the operation and maintenance of the Radio System provided always that all copyright, confidentiality or proprietary legends or other markings shall be transposed onto such permitted copies. The Documentation and all permitted copies thereof shall at all times be treated as proprietary and a trade secret of Contractor or its suppliers and be subject to the provisions of this Agreement for Confidential Information.

## **Article 9 Additional Requirements Incorporated by Reference**

**9.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 9, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

**9.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of 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 City if it becomes aware of any such fact during the term of this Agreement.

**9.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in,

support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**9.4 Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

#### **9.5 Nondiscrimination Requirements**

**9.5.1 Non Discrimination in Contracts** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts under this Agreement the provisions of Articles 131 and 132 and shall require all subcontractors under this Agreement to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**9.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Section 131.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for 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 Labor and Employment Code Section 131.2.

**9.6 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

**9.7 Health Care Accountability Ordinance.** Contractor shall comply with the requirements of San Francisco Labor and Employment Code Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**9.8 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**9.9 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor 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.

Contractor agrees in the performance of this Agreement 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. Contractor 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) or California Drug-Free Workplace Act of 1990, Cal. Gov. Code, § 8350 et seq., as applicable.

**9.10 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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 (a) 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, (c) a

candidate for that City elective office, or (b) 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 City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract. any committee that is sponsored or controlled by Contractor. Contractor 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 City department with whom it is contracting.

### **9.11 Consideration of Criminal History in Hiring and Employment Decisions**

9.11.1 Contractor agrees to comply fully with and be bound by all of the provisions of San Francisco Labor and Employment Code Article 142 ("City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions") of Article 142, including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

9.11.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**9.12 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

## **Article 10 General Provisions**

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

To City: SFMTA  
Attention: Lisa Walton and David Rojas  
1 South Van Ness Avenue, 7th floor  
San Francisco, CA 94102  
phone: 415-646-2281  
email: Lisa.Walton@sfmta.com

To Contractor: L3Harris Technologies, Inc.  
Attention: Robyn Ferguson and Jeremy Roe  
Communications Systems Segment  
221 Jefferson Ridge Parkway  
Lynchburg, Virginia 24501  
email:robyn.ferguson@L3Harris.com; jeremy.roe@L3Harris.com

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.

**10.2 Compliance with Americans with Disabilities Act.** Contractor 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.

**10.3 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor’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.

**10.4 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 10.1 (“Notices to Parties”) regarding change in personnel or place, and except by a Contract Modification, executed and approved as required under City law and under the policy of SFMTA Board of Directors. Contractor shall cooperate with 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 Agreement by more than 20% (“CMD Contract Modification Form”).

### **10.5 Dispute Resolution Procedure**

**10.5.1 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 Agreement. If the Parties are unable to resolve the dispute at the level of project managers and staff, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the MTA’s Chief Technology Officer (CTO) a written request for administrative review and documentation of Contractor’s claim(s). Upon such request, the CTO

shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing Contractor 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, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

**10.5.2 Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by 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 Agreement shall operate to toll, waive or excuse Contractor'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.

**10.6 Agreement Made in California; Venue.** This Agreement is made and shall be performed in San Francisco, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

**10.7 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**10.8 Entire Agreement.** This Agreement and any documents expressly incorporated by reference herein constitute the entire Agreement between the Parties as to the matters addressed herein. This Agreement sets forth all intended rights and obligations and supersedes any and all previous agreements correspondence and understandings between them with respect to the maintenance of the Radio System. This Agreement does not modify or waive any requirement of the Radio Contract (SMTA Contract 1240) that survives the expiration of the Radio Contract as stated in that agreement. This Agreement may be modified only as provided in Section 10.4 ("Modification of this Agreement").

**10.9 Compliance with Laws.** Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, 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.

**10.10 Severability.** Should the application of any provision of this Agreement 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 Agreement 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.

**10.11 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, 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 Agreement.

**10.12 Order of Precedence.** Contractor agrees to perform the Services in accordance with the terms and conditions of this Agreement. In the event of any inconsistency between the provisions of any Appendix and the provisions of this document, the provisions of this document shall govern.

**10.13 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 City Data given by City to Contractor in the performance of this Agreement, or which in any way might reasonably require access to City 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 City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

**10.14 MacBride Principles.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that 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.

## **Article 11 SFMTA Specific Terms**

### **11.1 Large Vehicle Driver Safety Training Requirements**

11.1.1 Contractor agrees that before any of its employees and subcontractors that drive large vehicles within City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) SFMTA’s Large Vehicle Urban Driving Safety training program or (b) a training program that meets SFMTA’s approved standards for large vehicle urban driving safety. SFMTA’s approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletrainningstandards](http://www.SFMTA.com/largevehicletrainningstandards). This requirement does not apply to drivers providing delivery services who are not employees or

subcontractors of Contractor. 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.

11.1.2 By entering into this Agreement, Contractor agrees that in the event Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 Contractor’s failure to comply with this requirement, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor’s failure to comply.

## **Article 12 Data and Security**

**12.1 Nondisclosure of Proprietary and Confidential Information.** In the performance of Services, each Party may have access to the other Party’s proprietary or confidential information, the disclosure of which to third parties may damage the owner of the proprietary or confidential information. If a Party discloses proprietary or confidential information to the other Party, such information must be held by the receiving Party in confidence and used only in performing the Agreement. Each Party shall exercise the same standard of care to protect such information as it would to reasonably and prudently protect its own proprietary or confidential information.

**12.2 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City. All data collected, used, maintained, processed, stored, or generated or recorded by, input to, or reported from the Radio System in any format is City Data. Contractor shall have no claim of ownership to City Data.

### **12.3 Management of City Data and Confidential Information**

**12.3.1 Use of City Data and Confidential Information.** Contractor agrees to hold City Data in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any use, sharing or storage of City Data outside the United States is subject to prior written authorization by SFMTA. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this Agreement on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use City Data 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 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 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.

**12.3.2 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City’s behalf under this Agreement

**12.3.3 Access to City Data.** City shall at all times have access to and control of City Data shall be able to retrieve it in the format which it is maintained in the System.

### **Article 13 Included Appendices**

The following documents are appended to this Agreement and incorporated by reference to this Agreement:

- Appendix A: Scope of Work
- Appendix B: Calculation of Charges
- Appendix C: Maintained Equipment
- Appendix D: Software License

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Day first mentioned above.

| <b>CITY</b>   | <b>CONTRACTOR</b>  |
|---|--|
| <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Jeffrey P. Tumlin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu<br/>City Attorney</p> <p>By: _____<br/>Robert K. Stone<br/>Deputy City Attorney</p> | <p><b>L3Harris Technologies, Inc</b></p> <hr/> <p>Jeremy S. Roe<br/>Principal, Contracts<br/>221 Jefferson Ridge Parkway<br/>Lynchburg, VA 24501</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 11.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000019021</p> |

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## APPENDIX A

### SCOPE OF WORK

#### 1. INCLUDED MAINTENANCE SERVICES

##### 1.1 Summary of Maintenance Services

L3Harris shall provide the Services described in this Appendix A, Section 1, including on-site and remote monitoring, telephone support, troubleshooting, and on-site Equipment repair for the Radio System, and Software Updates, (collectively, the “**Base Services**”).

All Work described in this Section 1 (Included Maintenance Services) are Base Services and are fully compensated by the Base Services Fees set out in Appendix B. Upon SFMTA’s request, Contractor will provide Additional Services under Work Orders, as described in Section 3 (“Additional Services”).

##### 1.2 Priority 24 x 7 x 365 L3Harris Technical Assistance Center (TAC)

Contractor shall provide SFMTA a toll-free L3Harris Technical Assistance Center (TAC) number to call for all Services requests and to report System, Software and Equipment Issues. Contractor shall log and track each Services request status through resolution of the reported Issue. The Service request phone line shall be available 24 hours per Day, every Day of the year.

##### 1.3 Maintained Equipment Return and Repair

SFMTA will notify Contractor when Serialized Equipment (as defined herein) fails and SFMTA replaces the failed unit of Serialized Equipment with a unit from the Spares inventory that Contractor will keep at the L3Harris Facility. Where new old stock is available or Equipment can be repaired by a Contractor-approved third party, Contractor shall provide a Return Material Authorization (RMA) within two (2) Business Days from the date of receipt of SFMTA’s notice. Contractor will then collect the failed Equipment or component from the SFMTA, and will inspect, repair, or replace, test, and return it to SFMTA. Shipping costs shall be at the Contractor’s expense. Contractor will provide equipment return and repair services for the following Maintained Equipment in these subsystems:

1. Central Subway tunnel equipment & head-end
2. Market Street tunnel equipment & head-end
3. Vehicle on-board radios
4. Cores
5. Network infrastructure
6. RF sites
7. Microwave communications ap
8. Handheld portable radios

##### 1.4 Conduent Equipment RMA Shipping

Contractor shall provide shipping and handling services for return material authorization (RMA) Conduent Equipment in the Radio System, not to exceed \$400 per month in shipping costs as follows:

- Receipt of equipment from SFMTA
- Submission of RMA request to Conduent and receive RMA instructions

- Packaging of defective Conduent Equipment
- Shipping of Conduent Equipment to and from Conduent repair location, as applicable, at Contractor's or Conduent's expense

Upon expending \$400 in shipping costs in any month, Contractor shall notify SFMTA that further Work under this Section 1.4 will be charged to SFMTA as Additional Services until the end of such month.

### **1.5 Software Updates**

Contractor shall provide standard release of Updates (including Patches, Fixes and Workarounds) for SUMS (Software Managed Services) and SMS (Security Update Managed Services) products as part of Base Services. SFMTA shall install all Software.

### **1.6 Equipment Spare Management**

Contractor shall store and manage Spares to be used in case of unexpected Equipment failures at the L3Harris Facility, as necessary to address Issues at all Severity Levels. Contractor shall maintain not fewer than the Spares listed (by Equipment type and number of units) in Appendix C, Section C to this Agreement. On or before July 31, 2024, Contractor shall: (1) provide SFMTA a complete inventory list of Spares that it has stored at the L3Harris Facility by Equipment type, quantity of units, and serial numbers; (2) affirm that the Spares will operate as provided in applicable Documentation (or if no Documentation exists, Contractor shall affirm that the Equipment will function as required to operate in the System). Contractor shall update that inventory list no less often than every 90 Days from the Effective Date, and shall also report the Spares (by Equipment type and quantity) that have been used in the preceding 90 Days. Contractor will recommend in writing that SFMTA purchase additional Spares under a negotiated Work Order (as provided in Section 3 of this Appendix A) that Contractor and SFMTA agree are necessary to replenish Spares inventory or are otherwise necessary for effective delivery of the Services.

### **1.7 Priority Engineer**

As part of Base Services, Contractor shall provide SFMTA up to ten (10) hours per week of access to an engineer who has experience and knowledge of SFMTA's radio infrastructure. Unused hours will be rolled over to the following week or month, but all hours accrued in a calendar quarter must be used by the end of that calendar quarter. the SFMTA may purchase Additional Hours as Additional Service at the rates stated in Appendix B, Section B.

### **1.8 Service Hours**

Except when responding to a Severity 1 Issue (as described in Section 1.10, below) or when responding to a SFMTA call for Services to Contractor's Technical Assistance Center (as provided in Section 1.2), Contractor shall perform the Services from 8:00 AM to 5:00 PM P.S.T. on Business Days. Work outside these hours will be provided as Additional Services, as stated in Section 3 of this Appendix A.

### **1.9 Monthly Review of Service Reports and Logs**

Contractor shall review System logs and reports each month to determine the Radio System status and shall perform remedial investigation and mitigation of Issues revealed by the reports on any Maintained Equipment.

### **1.10 Service Response Requirements**

Contractor shall provide on-site System support based on the severity of the Issue(s) the Radio System is experiencing within the time specified for each class of System failure, as described in the chart, below. Contractor shall provide diagnostics and replacement of failed Maintained Equipment component(s) down to the field replacement unit.

| Severity Level | Problem Types  |
|----------------|--|
| Severity 1     | Major system failure or significant system impairment(s) including but not limited to:<br>33% of Stationary Equipment down<br>33% of Site channels down<br>50% of data channels down<br>Site Environment Alarms (smoke, access, temperature, HVAC Power) |
| Severity 2     | Intermittent problems  |
| Severity 3     | Parts questions and upgrades   |

Contractor shall respond to a Severity 1 Issue within 240 minutes of the SFMTA’s report of the Issue to Contractor. Contractor shall respond to a Severity 2 or Severity 3 Issue within 24 hours or the next business Day from the SFMTA’s report of the Issue to Contractor.

**1.11 L3Harris Call Out Procedure & Escalation Plan**

SFMTA shall follow the escalation plan defined below, with changes to plan negotiated and documented via written communication, including email.

**STEP 1 - (A) Technician:** SFMTA’s Point of Contact will notify Contractor on-call technician by calling or emailing Brian Gonsalves (+1 4152150715) or SFMTA approved replacement. **(B)** If after four minutes, the Contractor on-call technician has not responded to the SFMTA's call, SFMTA will re-initiate the call to the Step 1 number again. **(C)** If after four (4) more minutes the L3Harris on-call technician has not responded to the SFMTA's call, SFMTA will proceed to Step 2.

**STEP 2 - (A) Lead:** SFMTA will call the Program Manager, Robyn Ferguson (+1 4159967861) or SFMTA approved replacement. **(B)** If after fifteen (15) minutes the Program Manager has not responded to the SFMTA’s call, SFMTA will proceed to Step 3.

**STEP 3 - (A) Service Manager:** SFMTA will call their Service Manager, Andrew Cassidy (+1 8505822464) or SFMTA approved replacement. **(B)** If after fifteen (15) minutes the Service Manager has not responded to SFMTA’s call, SFMTA will proceed to Step 4.

**STEP 4 - (A) Regional Service Manager:** SFMTA will call the Regional Service Manager Andy Bosshart (+1 3202179332) or SFMTA approved replacement.

**2. EXCLUSIONS AND LIMITS ON SERVICES**

**2.1** Maintained Equipment (comprised of the list of Equipment set forth in Appendix C) is limited to items containing serial numbers (“*Serialized Equipment*”) sold by L3Harris to the SFMTA, including the components of the Radio System and the fiber system provided under the Radio Contract (Contract 1240) and the Central Subway (under the Central Subway Radio Contract, Contract No. SFMTA-2019-68-FTA).

**2.2** Due to the age of some of the Equipment and Software used in the Radio System, L3Harris may have limited ability to support, troubleshoot, or restore operation of the Radio System or its subsystems if an Issue is caused by End-of-Life or End-of-Support Equipment. For

example: Conduent and others systems may not function together, Cisco may not support certain devices, Microsoft is no longer supporting OS patches for Windows 7 and 8; Windows Server 2012 is published to be End-of-Support in August, 2023; NetApp SAN is currently End-of-Life and End-of-Support.

**2.3** L3Harris will use commercially reasonable efforts as Base Services to support, trouble shoot, and restore to System operation. Where an Issue arises involving elements of the System that have reached End-of-Life or End-of-Support and parts and support are not available, however, L3Harris may be delayed or incapable of providing Maintenance Services where affected parts are unavailable or Software support is not available. If L3Harris determines that it is not possible to provide Services to support End-of-Life or End-of-Support Equipment and Software, it will inform SFMTA of the need to replace those elements of the Software or Equipment and will recommend appropriate replacements for SFMTA to procure from Contractor as Additional Services or the SFMTA may procure from other sources.

**2.4** Consumable items, such as batteries, personal interface units like microphones, or environmentally consumed objects that are installed in the Equipment are excluded from Contractor maintenance.

**2.5** Contractor is not obligated to provide maintenance to Equipment provided by Conduent under Contract 1240 or separate agreement(s) between the SFMTA and Conduent.

**2.6** Equipment that the SFMTA has failed to maintain (i.e., replacement of filters and batteries as necessary for continued operation, such as filter and battery replacement), or that has been abused, vandalized, or intentionally damaged is excluded from Maintenance Services.

### **3. ADDITIONAL SERVICES AND WORK ORDERS**

**3.1** The SFMTA may issue to Contractor written "Work Orders" for Additional Services that are necessary to maintain or repair the System, provide additional training to SFMTA staff, or to procure additional Equipment and spare parts. The Parties will negotiate the scope, price and schedule of Work Orders for Additional Services. A Work Order must be approved by the Director of Transportation or other authorized SMFTA Division Director and the Contractor's authorized representative. The total amount of all Work Orders for Additional Services shall not exceed two hundred thousand dollars (\$200,000) per year of the Agreement (July 1 to June 30).

**3.2** A Work Order for Additional Services must describe and shall be limited to the Additional Services that Contractor will perform, Equipment and other materials to be procured or used, the schedule when Contractor will perform the Additional Services, any applicable Milestones for completion of elements of the Additional Services, and the total compensation to be paid Contractor for those Additional Services. Compensation in a Work Order may be stated as a single lumpsum or multiple lumpsum payments associated with the completion of Milestones described in the Work Order. The negotiated costs of Work Orders for Additional Services shall be based on the hourly personnel rates for Additional Services as set forth in Appendix B, Section B, and any other expenses not included in the hourly personnel rates.

**3.3** All Work Orders issued under this Agreement are subject to the terms and conditions stated in this Agreement and its Included Appendices. General terms and conditions of either Party printed on any form used to request, procure, provide or contract for Additional Services shall be void and of no force and effect. A Work Order modifies this Agreement only as the work Contractor will perform as described in the Work Order, the cost (lumpsum price) of said work and Equipment purchased under the Work Order, and milestone dates or other delivery schedule requirements. Any other changes to the Agreement must be included in a Contract Modification, as provided in the Agreement in Section 10.4.

### **4. EQUIPMENT PROCUREMENT AND WARRANTY.**

**4.1** The SMFTA may issue Work Orders to procure Spare and other Equipment under this Agreement as Additional Services, as provided in the preceding Section 3.

**4.2** Contractor shall deliver Equipment that SFMTA purchases under this Agreement to the L3Harris For other location the SFMTA may designate. Contractor shall provide SFMTA notice of delivery by email, and a SFMTA representative will inspect the delivered Equipment at the L3Harris Facility to confirm that it is correct and has been delivered undamaged. If SFMTA determines that the Equipment is acceptable, the SFMTA will accept the Equipment, and Contract may then submit an invoice for it.

**4.3** Contractor shall store Equipment designated to be held as Spares in the L3Harris Facility.

**4.4** SFMTA shall pay Contractor for accepted Equipment as provided in Section 3.3 of the Agreement.

**4.5** Contractor shall bear the risk of loss of Equipment in transit, and shall replace any Equipment that is lost or damaged prior to delivery to SFMTA facilities. SFMTA shall bear the risk of loss or damage to Equipment that is in SFMTA's possession and control.

**4.6** Title and ownership of Equipment shall transfer to the SFMTA upon the SFMTA's payment to Contractor for the Equipment.

**4.7** SFMTA shall pay shipping costs for Equipment, which Contractor shall include in

all price quotes and invoices.

**4.8** Contractor warrants to SFMTA that new Equipment that Contractor provides to SFMTA under this Agreement shall be correct and serve its intended purpose, free from defects in material and workmanship and shall conform to its published specifications for the term of this Agreement. Contractor shall repair or replace malfunctioning Equipment at no additional charge to SFMTA for one year commencing on the installation of the accepted Equipment to a transit vehicle or to a Site. Warranty shall not commence upon delivery or run during any period that the accepted Equipment is in storage prior to installation.

**4.9** Contractor shall not use “grey market” equipment, except as may be necessary to replace End-of-Life or End-of-Support Equipment without SFMTA’s approval.

**4.10** Contractor will be responsible for all shipping charges incurred in returning defective Equipment to Contractor's plant and shipping repaired or replacement Equipment to SFMTA. All costs for warranty repair and replacement of Equipment are included in the Base Services Fee.

## **5. CITY’S RESPONSIBILITIES**

**5.1** SFMTA shall keep all Equipment in an operating environment where the equipment may operate within tolerance of their manual’s operational specifications.

**5.2** SFMTA shall be responsible for the following tasks:

- 1.** Radio Site: environmental systems maintenance, system administration, generator maintenance, generator remote alarm monitoring
- 2.** Subway and Station: environmental systems maintenance, filter replacement, tunnel fiber maintenance, system administration
- 3.** Symphony Console: environmental systems maintenance, preventative hardware maintenance, system administration
- 4.** Vehicle: environmental systems maintenance, on-site maintenance, system administration
- 5.** Fiber Backhaul System: preventative hardware maintenance, equipment troubleshooting and repair, remote alarm monitoring, system administration
- 6.** Conduent System Maintenance



**6. CITY'S LIAISON**

In performing the Services provided for in this Agreement, Contractor's liaison with SFMTA will be David Rojas, Technical Program Manager, or as assigned by SFMTA through notice given via email to Contractor.

*End of Appendix*

**Appendix B**

**Calculation of Charges**

**A. Base Services**

| <b>Service</b>               | <b>July 1, 2024-<br/>June 30,<br/>2025</b> | <b>July 1,<br/>2025-June<br/>30, 2026</b> | <b>July 1,<br/>2026-June<br/>30, 2027</b> | <b>Total</b>       |
|------------------------------|--|---|---|--------------------|
| Base Services                | \$1,998,999.0<br>0                         | \$1,998,999.0<br>0                        | \$1,998,999.0<br>0                        | \$5,996,997.0<br>0 |
| SUMS & SMS                   | \$117,507.60                               | \$120,081.01                              | \$122,710.79                              | \$360,299.40       |
| Tax on SUMS &<br>SMS (8.63%) | \$10,135.03                                | \$10,356.99                               | \$10,583.81                               | \$31,075.82        |
| Total Due                    | \$2,126,641.6<br>3                         | \$2,129,437.0<br>0                        | \$2,132,293.5<br>9                        | \$6,388,372.2<br>2 |

**B Additional Services**

Current catalog rates will be updated each July 1, following the first anniversary of the Effective Date. Travel costs shall be separately calculated at GSA rates and shown in proposals for Additional Services. Additional Services shall not exceed \$200,000 per year without a Contract Modification.

*(See table on next page, remainder of this page intentionally left blank.)*

**ENGINEERING SERVICES**

| E/C | Model No.  | List Price \$ | Description  |
|-----|------------|---------------|--|
| V   | YVSN1S     | 1,210.00      | SERVICE, RF INTEGRITY Daily rate for Engineering services to predict RF coverage from designated transmission site.  |
| V   | YVSN3C     | 605.00        | SERVICE, COVERAGE MAP  |
| V   | YASP1C     | 1,590.00      | SERVICE, L3H PROG DESIGN ENGR Daily rate for Program Design Engineering Services.  |
| V   | MAYA-NSN6L | 2,400.00      | SERVICE, L3H IMPL CHIEF ENGR Daily rate for Implementation Chief Engineering Services.   |
| V   | YBSP1M     | 1,590.00      | SERVICE, L3H PROJECT MANAGEMENT Daily rate for Project Management to assist implementing customer projects.  |
| V   | MAYB-NSN6M | 2,400.00      | SERVICE, L3H SR PROJECT MANAGEMENT Daily rate for Senior Project Management to assist implementing customer projects.  |
| V   | YVSN3A     | 1,500.00      | SERVICE, DATA SYSTEM ENGINEER Daily rate for Data System Engineer.   |
| V   | YVSN1X     | 7,850.00      | SERVICE, DATA LAB VERIFICATION, 1 WEEK Weekly rate for access and support to verify applications on L3Harris' Radio systems.   |
| V   | YVSN1Y     | 605.00        | SERVICE, DATA LAB SETUP Mandatory fee to prepare the Data Lab for verification testing.  |
| V   | YVSN1Z     | 1,200.00      | SERVICE, DATA LAB RETURN VISIT, PER DAY Daily fee for return visits to Data Lab when additional verification testing is required.  |
| V   | YVSN3B     | 1,000.00      | SERVICE, DATA SYSTEM ENGINEER T & L Necessary System Engineering travel and living expense to support site visits.   |
| V   | YSSN1T     | 1,600.00      | SERVICE, SENIOR SYSTEM TECHNICIAN, DAILY RATE Daily rate for Senior Technicians to perform installation, testing, system alignment or evaluate special applications. Travel and living will be billed in addition to this fee. |
| V   | YSSN1U     | 1,300.00      | SERVICE, SYSTEM TECHNICIAN, DAILY RATE Daily rate for Technicians to perform installation, testing, system alignment or evaluate special applications. Travel and living will be billed in addition to this daily rate.        |
| BC  | YCSP3G     | TBD           | SERVICE, FREQUENCY COORDINATION Service provided by vendors. Vendor fees to be reviewed with customer.   |
| BC  | YV-SZ9H    | TBD           | SERVICE, TOWER REMEDIATION Engineering and Civil Construction services for tower remediation to be provided by vendors. Vendor fees to be reviewed with customer.  |
| BC  | YV-SZ9J    | TBD           | SERVICE, TOWER CONSTRUCTION Engineering and Civil Construction services for tower facility. Tower facility construction includes towers, shelters and associated utilities, security measures, and site access.                |

***End of Appendix B***

## Appendix C - Maintained Equipment

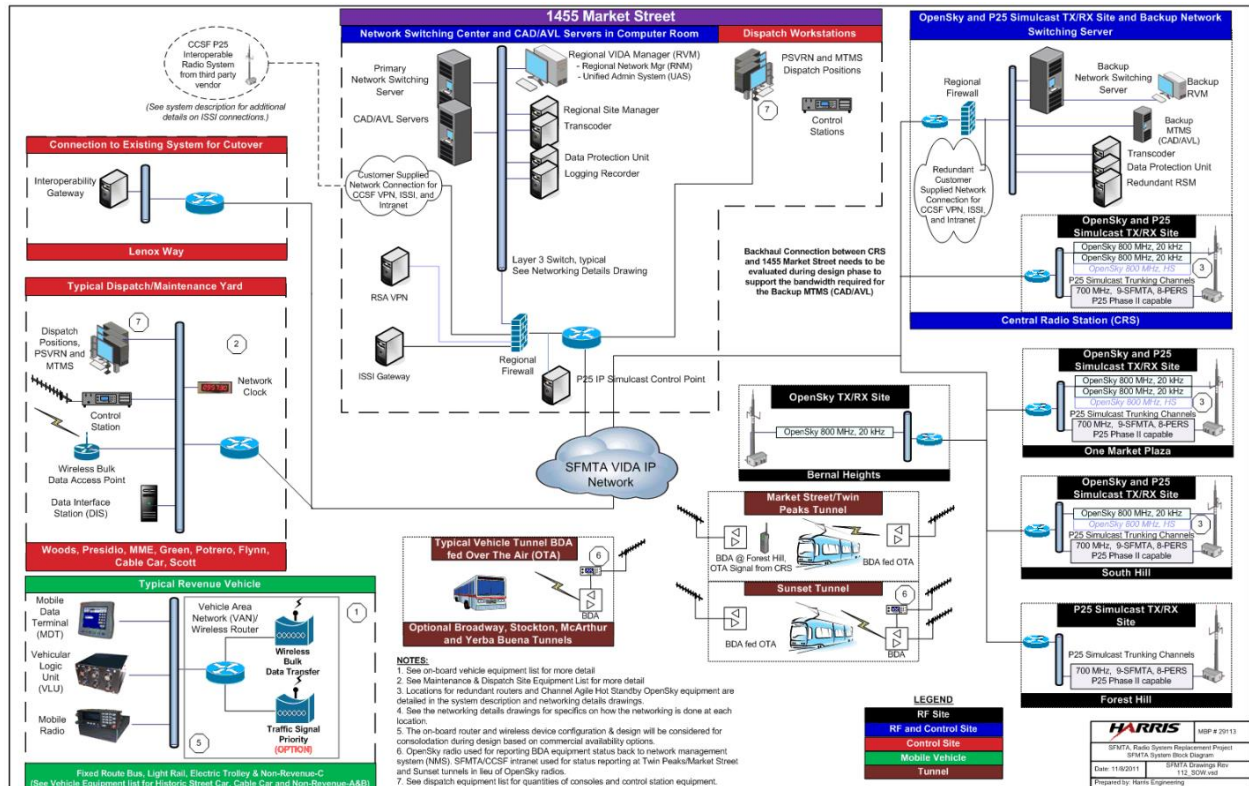
### A. List of Serialized Equipment<sup>1</sup>

|  |      |
|--|------|
| Coverage Extender  |      |
| Base Station,OpenSky Cell Site,800MHz  | 1    |
| Dispatch Consoles  |      |
| CONSOLE,MIP,BUNDLE,SYMPHONY HDWR NON EN  | 40   |
| RF Sites (1 Market Plaza, Bernal Heights, South Hill, Forest Hill, CRS, Bayview) |      |
| Controller,IP Simulcast,MASTR V, w/ Cab  | 18   |
| IP Simulcast,Comm Equip,P25,MASTR V (AC)   | 1    |
| IP Simulcast,Comm Equip,P25,MASTR V (DC)   | 1    |
| Station,MASTR V,P25T,700MHz  | 36   |
| Station,SkyMASTR,800MHz,100W   | 20   |
| MASTR V IP Simulcast,Tx Site,Comm Equip  | 4    |
| Mobile & Portable Radios   |      |
| Mobile,M7300,764-870MHz,Half Dplx  | 9    |
| MOBILE,XG-75M/M7300,764-870MHZ,HALF DPLX   | 1695 |
| Portable,P7350,764-870MHz,Scan   | 1    |
| Portable,P7370,764-870MHz,System   | 2    |
| PORTABLE,XG-75,764-870MHZ,SCAN,BLK-GRY   | 702  |
| PORTABLE,XG-75,764-870MHZ,SCAN,BLK-YEL   | 1    |
| PORTABLE,XG-75,764-870MHZ,SYS,BLK-GRY  | 27   |
| Radio System "Core" (CRS, TMC)   |      |
| Server, ISSI GW SR10A  | 2    |
| Server, NSS Primary SR10A  | 2    |
| Server, NSS Secondary SR10A  | 3    |
| Server, Transcoder SR10A   | 5    |
| Server, VIDA Mgmt SR10A  | 6    |
| SERVER,PREMIER NSC,HYPERV  | 1    |
| System Equipment,Interop Gateway   | 1    |
| VIDA Security, NSC   | 3    |
| Microwave Network  |      |
| 7705 Microwave Router and Microwave RF Equipment                                 | 15   |
| Central Subway Tunnel  |      |
| CSP-DSP  | 48   |
| CSP-700 FOI-BDA  | 3    |
| CSP-800 FOI-BDA  | 3    |
| 700 FFDPA  | 6    |
| 800 FFDPA  | 6    |
| DSP Power Supply   | 12   |
| Processor (Lantronix)  | 12   |
| Fan Tray   | 6    |

<sup>1</sup> To be updated by Contractor as provided in Appendix A, section 1.6.

|                           |     |
|---------------------------|-----|
| Central Subway Head-End   |     |
| FOI-HE 700                | 15  |
| FOI-HE 800                | 15  |
| Processor (Lantronix)     | 4   |
| FOI-HE Power Supply       | 4   |
| Digital Atten: 700-800 DL | 2   |
| Digital Atten: 700-800 UL | 2   |
| Market Street Tunnel      |     |
| OH-DSP                    | 192 |
| OH-DSP Proc               | 48  |
| OH-700 FOI-BDA            | 12  |
| OH-800 FOI-BDA            | 12  |
| Market Street Head-End    |     |
| FOI-HE 700                | 15  |
| FOI-HE 800                | 15  |
| Processor (Lantronix)     | 4   |
| FOI-HE Power Supply       | 4   |
| Digital Atten: 700-800 DL | 2   |
| Digital Atten: 700-800 UL | 2   |

## B. As-Built drawings showing location of Maintained Equipment



### C-1. Spares – Market Street<sup>2</sup>

| DESCRIPTION                     | MODEL          | SERIAL NUMBER | OTHER INFORMATION  |
|---------------------------------|----------------|---------------|--|
| CSP-DSP 700MHz<br>10.128.59.226 | 1456DSP-CB     | 0323-102      |  |
| DSP FW                          | 1456DSPCC      | 0220-325      |  |
| DSP FW                          | 1456DSPCC      | 0220-341      |  |
| DSP FW                          | 1456DSPCC      | 0220-323      |  |
| DSP FW                          | 1456DSPCC      | 0220-340      |  |
| DSP 700 MHz 10.128.59.225       | 1456DSP-CB     | 0323-101      |  |
| DSP FW                          | 1456DSPCC      | 0220-322      |  |
| DSP FW                          | 1456DSPCC      | 0220-337      |  |
| DSP FW                          | 1456DSPCC      | 0220-365      |  |
| DSP FW                          | 1456DSPCC      | 0220-353      |  |
|                                 | 1456FOI-HE-700 | 0323-3001     | IP Addr:<br>10.128.59.113<br>PORT: 49485 NM:<br>255.255.255.224<br>GW: 10.128.59.126 |
|                                 | 1456FOI-HE-800 | 0323-4001     | IP Addr:   |

2 To be updated by Contractor as provided in Appendix A, Section 1.6.

| DESCRIPTION                               | MODEL            | SERIAL NUMBER    | OTHER INFORMATION   |
|---|------------------|------------------|---|
|   |                  |                  | 10.128.59.114 Port<br>49486 NM:<br>255.255.255.224<br>GW: 10.128.59.126 |
| L3Harris Fiber Optic Interface<br>700 MHz | 1456FOI-BDA-700  | 0120-324         | 10.128.59.233 Port<br>No: 49420   |
| L3Harris Fiber Optic Interface<br>800 MHz | 1456FOI-BDA-800  | 0120-425         | 10.128.59.234 Port<br>No. 49450   |
| L3Harris Dual Power Amplifier<br>700MHz   | 1456FFDPA-700    | 0120-129         | 10.128.59.228 Port<br>No: 49435   |
| L3Harris Dual Power Amplifier<br>800 MHz  | 1456FFDPA-800    | 0120-228         | 10.128.59.232 Port<br>No. 49445   |
| Mobile Radio                              | MAMW-SDMXX       | A40209220806     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209204093     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209204368     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209204054     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209210810     |   |
| Mobile Radio                              | MAMW-SDMXX       | A4020922289      |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209210574     |   |
| Mobile Radio                              | MAMW-SDMXX       | A49209204357     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209204386     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209233461     |   |
| Mobile Radio                              | MAMW-SDMXX       | A40209210733     |   |
| Cisco Router                              | CMMJ100ARA       | FTX184080W2      |   |
| Cisco Router                              | CMMJ100ARA       | FTX183886PJ      |   |
| Cisco Router                              | CMMJ100ARA       | FTX183682DA      |   |
| Battery                                   | AGM-124OT        | 2274094          |   |
| Battery                                   | AGM-124OT        | 2274091          |   |
| Battery                                   | AGM-124OT        | 207469           |   |
| Battery                                   | AGM-124OT        | 227407           |   |
| Battery                                   | AGM-124OT        | 2274068          |   |
| Battery                                   | AGM-124OT        | 2274095          |   |
| Battery                                   | AGM-124OT        | 2274070          |   |
| Battery                                   | AGM-124OT        | 2274098          |   |
| Fan                                       | X001FW41NP       | AV-F8025         | Quantity 4  |
| Fan                                       | P321030001       | n/a              | Qty 12  |
| Fan                                       | PF8025B1-000-F99 |                  | Qty 2   |
| Fan                                       | PMD1208PTB2-A    |                  | Qty 8   |
| Fan                                       | MC2483NDN        | 000942-19040433A |   |
| DC Cooling Fan 12VDC                      |                  |                  | Qty 11  |
| Fan                                       | MC2483NDN        | 11002354         |   |
| Fan                                       | MC2483NDN        | 945              |   |
| Fan                                       | MC2483NDN        | 630              |   |

| DESCRIPTION                     | MODEL                | SERIAL NUMBER          | OTHER INFORMATION |
|---------------------------------|----------------------|------------------------|-------------------|
| Fan                             | MC2483NDN            | 941                    |                   |
| Fan                             | MC2483NDN            | 956                    |                   |
| Fan                             | MC2483NDN            | 955                    |                   |
| Fan                             | MC2483NDN            | 954                    |                   |
| Fan                             | MC2483NDN            | 953                    |                   |
| Fan                             | MC2483NDN            | 952                    |                   |
| Fan                             | MC2483NDN            | 951                    |                   |
| Fan                             | MC2483NDN            | 958                    |                   |
| Fan                             | MC2483NDN            | 957                    |                   |
| Fan                             | MC2483NDN            | 960                    |                   |
| Fan                             | MC2483NDN            | 959                    |                   |
| Fan                             | MC2483NDN            | 948                    |                   |
| Fan                             | MC2483NDN            | 950                    |                   |
| Fan                             | MC2483NDN            | 959                    |                   |
| Axial Fan Series - Roof Fan kit | HS1238A-W            | X2309                  | Qty 11            |
| AC Axial Fan                    | AA1281HB-AT          |                        | Qty 3             |
| Flatpack 2 Power Rack           | 200507               | SN:145171050441        |                   |
| Flatpack 2 Power Rack           | 200507               | SN:145071076804        |                   |
| Floor wall mounting kit         | ACS-810-FWM          | none                   | Qty 2             |
| Alcatel                         | 48VDC                | 3HE01191AAA01          |                   |
| Media Converter                 | S-110P-SFP-XT        | 123-155212M11520       |                   |
| Media Converter                 | S-110P-SFP-XT        | 123-155212M11507       |                   |
| DC Power Supplies               | GNT415ABT-112G       | PS-012653-001<br>REV C |                   |
| DC Power Supplies               | GNT415ABT-112G       | PS-012653-001<br>REV E |                   |
| DC Power Supplies               | GNT415ABT-112G       | PS-012653-001<br>REV E |                   |
| Internal Hard Drive             | X488-<br>HCOBE900A10 | X488                   |                   |
| Internal Hard Drive             | X488-<br>HC0BE900A10 | X488                   |                   |
| CISCO 2900 SERIES               | CM-027501-401        | FJC1945A35Q            |                   |
| Catalyst 2960                   | CMMLR00ARB           | FCW1947A37P            |                   |
| CISCO 2900 SERIES               | CM-027501-401        | SFTX1837ALKS           |                   |
| PERLE                           | S-110P-SFP-XT        | 123-153920M11193       |                   |
| PERLE                           | S-110P-SFP-XT        | 124-300823M17026       |                   |
| PERLE                           | S-110P-SFP-XT        | 123-150716M11784       |                   |
| Media Converter                 | 5084004              | 120-004220M11229       |                   |
| Media Converter                 | 5084004              | 120-004220M11236       |                   |
| Cisco Catalyst                  | 3750-Xseries         | TNY-WS3750X-<br>3560X  |                   |
| Cisco Console                   | WS-C2960+24pc-l-     | FOC1850S8W0            |                   |



| DESCRIPTION                          | MODEL               | SERIAL NUMBER       | OTHER INFORMATION |
|--------------------------------------|---------------------|---------------------|-------------------|
|                                      | vol                 |                     |                   |
| Cisco Switch                         | IE-3010-165-8PC-VOL | FOC183Z4TA          |                   |
| Power Amplifier                      | EA-555010-011       | CR0011E00258        |                   |
| Power Amplifier                      | EA-555010-011       | CR011F30462         |                   |
| Power Amplifier                      | EA-555010-011       | CRO011F30483        |                   |
| Harris Radio Heads                   | CU23218-0004        | 96028277            |                   |
| Harris Radio Heads                   | CU23218-0004        | 98036639            |                   |
| Harris Radio Heads                   | CU23218-0004        | 98036664            |                   |
| Harris Radio Heads                   | CU23218-0004        | 98036663            |                   |
| Harris Radio Heads                   | CU23218-0004        | 960470021           |                   |
| Harris Radio Heads                   | CU23218-0004        | 96045764            |                   |
| XP Power                             | FCM400PS15          | V23170193           |                   |
| XP Power                             | PS-012653-002       | 102161-01-V23170189 |                   |
| XP Power                             | PS-012653-002       | V23170282           |                   |
| XP Power                             | PS-012653-002       | V20480004           |                   |
| XP Power                             | PS-012653-002       | V23170190           |                   |
| XP Power                             | PS-012653-002       | V20480022           |                   |
| TS1-EPC-48V 120 Vac media            | P331330001015095    | 6139                |                   |
| TS1-EPC-48V 120 Vac media            | P331330001015095    | 15071               |                   |
| TS1-EPC-48V 120 Vac media            | P331330001015095    | 15095               |                   |
|                                      | AIR-AP1572 eac-bkg  | FJC2002JO3B         |                   |
| Remote controller                    | SP721               | RE08782             |                   |
| TP LINK 24 PORT GIGABIT switch       | TL-SG1024           | 2.16625E+12         |                   |
| Fiber Optic Interface                | 1456F01-BDA-800     | 10.128.57.170       | Port 49450 800    |
| Fiber Optic Interface                | 1456F01-BDA-700     | 10.128.57.169       | Port 49420        |
| Network Sentry                       | CM21874             | 1000070900          |                   |
| Network Sentry                       | CM21874             | 100050107           |                   |
| Network Sentry                       | CM21874             | 100060235           |                   |
| Renice - Dispatch Console C3 Maestro | 14017-1002          | S1250641            |                   |
| Renice - Dispatch Console C3 Maestro | RISO64-SX22         | S1256-SU20926086    |                   |
| Cisco 2900 Series                    | 2911                | FTX1449A1WV         |                   |
| CISCO 2900 SERIES                    | 2911                | FTX1829A1WD         |                   |
| CISCO 2900 SERIES                    | 2911                | FJC2117A11S         |                   |
| CISCO 2900 SERIES                    | 2911                | FJC1945A35J         |                   |
| CISCO2900 SERIES                     | 2911                | FTX1713ALK9         |                   |
| CISCO2900 SERIES                     | 2911                | FTX1712ALPW         |                   |
| Cisco Switch Series IE               | 3010-165-8PC-V01    | FOC183374TA         |                   |

| DESCRIPTION                         | MODEL                              | SERIAL NUMBER            | OTHER INFORMATION |
|-------------------------------------|------------------------------------|--------------------------|-------------------|
| Media Converter                     | S-110p-SFP/05084004                | 120-004220M11229         |                   |
| Media Converter                     | S-110p-SFP/05084004                | 120-004220M11236         |                   |
| Switch                              | WS-C2960C-8TC0L-V01                | FOC1919Z1GL              |                   |
| Switch                              | WS-C2960C-8TC-L-V01<br>FOC1919z1GL | FOC1845Y6EC              |                   |
| CISCO 2980 CATALYST                 | WS-C2960-24TT-L                    | FCQ1528727B              |                   |
| CISCO 2980 CATALYST                 | WS-C2960-24TT-L                    | FOC1018X1LS              |                   |
| CISCO 2980 CATALYST                 | WS-2060-24TT-L                     | FCQ1722YOKQ              |                   |
| CISCO 2980 CATALYST                 | WS-2060-24TT-L                     | FOC1411Y797              |                   |
| CISCO 2980 CATALYST                 | WS-2060-24TT-L                     | FOC1110ZOGK              |                   |
| CISCO 2980 CATALYST                 | WS-2060-24TT-L                     | FOC1142X6YR              |                   |
| CISCO CATALYST 2960 SERIES          | CM27501-303RB                      | FOC1030Z8K6              |                   |
| Anatel Console                      | D131081                            | FD01717P2Y2              |                   |
| Anatel Console                      | D131081                            | FOO171R1NJ               |                   |
| DB Spectra Ceramic Combiner         | DSCC75-09D                         | H4389200-1               |                   |
| DB Spectra Ceramic Combiner 700 MHz | DSCC75-09D                         | H42596002-1              |                   |
| Power Supply                        | EA-555011-001                      | XE71636                  |                   |
| Applied Micro Design Dual Amplifier | 1456FFDPA-800                      | FH800MHZ                 | 10.128.58.136     |
| OpenSky Master High Power Amplifier | EA014351-002                       | A400EEC29555             |                   |
| DuraComm Fuse Panel                 | DP-20GMT-48                        | 249                      |                   |
| DuraComm DC Power Supply            | 1228                               | RB2A179226               |                   |
| Montgomery DSP 700 Secondary        | 1456DSP-700                        | 10.128.57.161            |                   |
| Switching Power Supply              | NES-150-12.1456DSPPS               | 0316-039                 |                   |
| Traffic Controller                  | EA-555004-001                      | HR0401H11144             |                   |
| Traffic Controller                  | EA-555016-002                      | HR1602D10070             |                   |
| DSP                                 | EA01456-0114                       | 16889-122                |                   |
| DSP                                 | 1456CB                             | 0316-023                 |                   |
| DSP                                 | 1456DSP-800                        | 10.128.57.165 Port 49460 |                   |
| DSP                                 | 1456DSP-800                        | 10.128.57.166 Port 49465 |                   |
| DSP                                 | 1456DSP-800                        | 10.128.59.67 Port 49480  |                   |

| DESCRIPTION                          | MODEL                | SERIAL NUMBER           | OTHER INFORMATION            |
|--------------------------------------|----------------------|-------------------------|------------------------------|
| Harris Baseband Processor            | EA-555005-001        | HR0501M20663            |                              |
| Harris Baseband Processor            | 1456- DSPCC          | 0316-201                |                              |
| Harris Baseband Processor            | 1456-DSPCC           | 0316-204                |                              |
| Harris baseboard processor           | 1456-DSPCC           | 0220-283                |                              |
| Harris baseboard processor           | 1456 DSPCC           | 0316-199                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-207                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-209                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-211                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-214                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-203                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-067                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-212                |                              |
| Harris baseboard processor           | 1456DSPCC            | 0316-208                |                              |
| A.M.D.I - Falcon. Dual Amplifier     | 1456FFDPA            | 10.128.58.196<br>Sunset |                              |
| Falcon.SNMP card intelligent network |                      | 54S309D224490127        |                              |
| Falcon SSG1.5KRM-1                   | SSG1.5KRM-1          | 1906002018              | 619                          |
| Falcon SSG1.5KRM-1                   | SSG1.5KRM-1          | 1509008038              | 1015 - UPS sunset interface  |
| Falcon external battery bank         | SSGB-1S40-5U         | F21088                  |                              |
| Battery                              | APCRBC143            | OH2313L01768            |                              |
| Network Adaptor                      | 825-0280-51          | 1326A                   |                              |
| Sunrise Systems                      | NXTPS7X96A485C-D1/0  | 1733-10808              | Customer part number 1200117 |
| Sunrise Systems                      | NXTP7X962M/J1587-2   | 0634-4942               |                              |
| Sunrise Systems                      | NXTP7X962M/J1587-2   | 0634-4468               |                              |
| Sunrise Systems                      | NXTPS7X96A485C-D1/0  | 1622-7111               |                              |
|                                      | CNU1ADBAAB           | FOC1704736T             |                              |
|                                      | HWIC-16A VO2         | 19032774                |                              |
| FANS                                 | MC2483NDN            | 3                       |                              |
|                                      | MC2483NDN            | 49                      |                              |
|                                      | MC2483NDN            | 171                     |                              |
| AXIAL FAN                            | AA1281HB-AT          | NONE                    | QUANTITY 2                   |
| Accedian Network                     | 501-018-11 HW Ver 11 | G403-4309               |                              |
| Ethernet demarcation gateway         | 00A012B0ES80         | 312360681               |                              |
| UPS                                  | SSG1-5KRM1           | 2307006035              |                              |
| Spectracom                           | EA-555027-002        | 3862                    |                              |
| OpenSky Master High Power            | 8590-0001-000        | A400A61E84F5            |                              |

| DESCRIPTION                             | MODEL           | SERIAL NUMBER                | OTHER INFORMATION           |
|---|-----------------|------------------------------|-----------------------------|
| Amplifier                               |                 |                              |                             |
| Open Sky Digital Controller Transceiver | 8590-001-000    | A400A61184E4                 | a400ac20008a ; a400ad20004b |
| Duracomm                                | JE1U-5012-MU    | 852271051                    |                             |
| Duracomm                                | HEIU-5012-MU    | 85227-1051                   |                             |
| Duracomm                                | HEIU-5012-MU    | B5354                        | date code 1061              |
| Duracomm                                | HEIU-5012-MU    | B6166                        | date code 1078              |
| Duracomm                                | HEIU-5012-MU    | B6169                        | date code1078               |
| Open Sky Digital Controller Transceiver | EA-014346-002   | A400EBC2F787                 |                             |
| Symphony Dispatch Platform              | R9063 Rev C     | 956513342                    |                             |
| Symphony Dispatch Platform              | R9063 Rev C     | 1010765932                   |                             |
| Symphony Dispatch Platform              | R9063 Rev C     | 1249200027                   |                             |
| Symphony Dispatch Platform              | R9063 Rev C     | 1263000070                   |                             |
| Symphony Dispatch Platform              | R9063 Rev C     | 1263000069                   |                             |
| DuracommModel                           | DP-20GMT-48     | SFMTA 0619                   |                             |
| DuracommModel                           | HEIU-5012-MU    | 299                          |                             |
| Cisco X Excess                          | AP-1522EAC-8-K9 | FJC1943J04G                  |                             |
| Falcon UPS Battery                      | none            | none                         |                             |
| Cisco                                   | ASA5506         | JMX2422XOED                  |                             |
| Cisco                                   | ASA5506         | LIT24082PKA, STP241809D1     |                             |
| Cisco                                   | ASA5506         | JMX2422X0E6                  |                             |
| Falcon                                  | SSG1-5KRM-1     | 1509008007                   |                             |
| Falcon                                  | SSG1-5KRM-1     | 1610001046                   |                             |
| DIS MME 2960 Switch                     | CMMLR00ARB      | FCW1947A4AJ / WS-C2960X-24PS | Bad 5/24/22                 |
| Rack Mount                              |                 |                              | B.V. Extra                  |
| SN MP Card                              |                 | 54S09D22030063               |                             |
| SN MP Card                              |                 | 54S309D22030062              |                             |
| USHA SMART II                           |                 | sn1120211637064              |                             |

## C-2. Spares – Central Subway

| DESCRIPTION   | MODEL | SERIAL NUMBER  | OTHER INFORMATION |
|---|-------|--|-------------------|
| CSP-DSP / 1456DSPCC                                   | 8     | 0220-325; 0220-340; 0220-323; 0220-341; 0220-322; 0220-337; 0220-365; 0220-353 |                   |
| CSP-700 FOI-BDA / 1456FFDPA-700                       | 1     | 0120-129   |                   |
| CSP-800 FOI-BDA / 1456FOI-BDA-800                     | 1     | 0120-228   |                   |
| 700 FFDPA / 1456FOI-BDA-700                           | 1     | 0120-324   |                   |
| 800 FFDPA / 1456FOI-BDA-800                           | 1     | 0120 -425  |                   |
| DSP Power Supply                                      | 2     |  |                   |
| Processor (Lantronix) / CSP-DSP 700 MHz 10.128.59.226 | 1     | 0323-102   |                   |
| Processor (Lantronix) / CSP-DSP 700 MHz 10.128.59.225 | 1     | 0323-101   |                   |
| Fan Tray  | 1     | FT300HAIBK   |                   |
| FOI-HE-700  | 1     | 0323-3001  |                   |
| FOI_HE-800  | 1     | 0323-4001  |                   |

## APPENDIX D

### Software License Agreement between L3Harris Corporation and City and County of San Francisco

This Software License Agreement (“Agreement”) is dated \_\_\_\_\_, between L3Harris Corporation, a Delaware Corporation, through its RF Communications Division, (“LICENSOR”) with offices at 221 Jefferson Ridge Parkway, Lynchburg, VA 24501 and the City and County of San Francisco, by and through its Municipal Transportation Agency (“LICENSEE”). LICENSOR is the owner of certain wireless communications software programs and LICENSEE desires to obtain a license from LICENSOR to use such wireless communications programs.

#### 1.0 Definitions.

- a. “Licensed Programs”: The term Licensed Programs shall mean the wireless communications computer programs in software or firmware supplied under SFMTA Contract 1240, dated on or about April 17, 2012 and under Contract No. SFMTA-2019-68-FTA dated June 28, 2019, by LICENSOR in binary form to the LICENSEE (stand alone or in conjunction with the purchase of a LICENSOR wireless communications system) and as identified in Exhibit A to this Agreement. Licensed Programs shall also include all other material related to the Licensed Programs supplied by LICENSOR to LICENSEE under the contracts referenced above, and which may be in machine readable or printed form, including but not limited to user documentation and/or manuals. “Binary form” shall mean the executable version of the Licensed Programs.
- b. “Third Party Software Products”: The term Third Party Software Products shall mean software products included in the Licensed Programs specified in Exhibit A which were licensed/purchased by LICENSOR from third parties.

#### 2.0 License Grant for Licensed Programs.

- 2.1 Subject to the Contract and the performance by LICENSEE of its obligations hereunder, LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts from LICENSOR, (a) an enterprise, non-transferable, non-exclusive, limited license in North America to use the licensed programs in binary form only and (b) install and execute such Licensed Programs on LICENSEE’s equipment and (c) an enterprise, non-transferable, non-exclusive, limited sublicense in North America to use the Third Party Software Products only as they are incorporated in to the Licensed Programs. Third Party Software Products are to be used for internal business purposes only, and not to be used for purposes of development or modifications.
- 2.2 With respect to the Licensed Programs, LICENSEE will not alter, deface, discard, or erase any media, documentation, or LICENSOR or Third Party LICENSOR’s trademarks or proprietary rights notices.

- 2.3 LICENSEE will not reproduce, modify, or make derivative works of the Licensed Programs, except that LICENSEE may make one archival, and one inactive backup, copy of the Licensed Programs. In addition, LICENSEE, its agents, consultants and/or its subcontractors will not attempt to reverse engineer, decompile, or reverse-compile any software contained in the Licensed Programs and any attempt to do so shall be a material breach of this Agreement.
- 2.4 Neither the Licensed Programs, nor any sublicensed programs or products are designed or intended for use in connection with any nuclear, aviation (including but not limited to on-line control of aircraft, air traffic, aircraft navigation or aircraft communications), or any other inherently dangerous application that would result in death, personal injury, catastrophic damage or mass destruction, or for use in the design, construction, operation or maintenance of any nuclear, aviation or other inherently dangerous application that would result in death, personal injury, catastrophic damage or mass destruction.
- 2.5 Third Party Software Products may be subject to additional license terms, which, if applicable, are set out in Product Specific License Terms attached hereto as Exhibit B to this Agreement.

**3.0 Protection and Security of Licensed Programs.** LICENSEE acknowledges and agrees that the Licensed Programs and any materials and/or documentation related thereto, and any portion thereof, supplied by LICENSOR hereunder are proprietary and confidential to LICENSOR and are a valuable commercial asset of LICENSOR and its third party licensors. LICENSEE also acknowledges and agrees that LICENSOR and/or the third party licensors have and shall retain all proprietary rights in their respective portions of the Licensed Programs and any materials and/or documentation related thereto. LICENSEE (i) shall respect such proprietary rights, (ii) shall protect LICENSOR and any third party licensor's proprietary rights at least to the extent that it protects its own proprietary information, (iii) shall not use the Licensed Programs nor any materials or documentation related thereto except for the purposes for which they are being made available as set forth in this Agreement and (iv) shall not reproduce, print, disclose, or otherwise make said Licensed Programs or materials and/or documentation related thereto available to any third party, in whole or in part, in whatever form, except as permitted in the terms of this Agreement.

#### **4.0 Warranty**

Seller warrants, that as long as LICENSEE is a party to and in compliance with the requirements of a software "FX" or other maintenance agreement for software updates and maintenance services from the LICENSOR that any Licensed Program furnished to LICENSEE under this Agreement shall be capable of successfully operating on the Designated Equipment in accordance with the logic defined in the Operator's Manuals when the system is supplied with correct input data. If, on the basis of evidence submitted to Seller during the term of any maintenance agreement for software updates and maintenance services or other agreement for the upgrade of the Software, it is shown that any Licensed Program does not meet this warranty, Seller will, at its option, either correct the defect or error in the Licensed Program, free of charge, or make available to LICENSEE a substitute program. The foregoing warranty is exclusive and in lieu of all other warranties whether written, oral, implied or statutory. No implied or statutory warranty of merchantability or implied or statutory fitness for a particular purpose shall apply.

Licensed Programs which have been developed or are owned by a third party licensor and which are sublicensed by LICENSOR to LICENSEE hereunder shall be warranted to LICENSEE only to the extent that the licensor of such sublicensed programs warrants such sublicensed programs to LICENSOR.

In the event that the Licensed Programs do not conform to the representation above, LICENSOR shall repair or replace the Software as provided in the applicable maintenance services agreement or other applicable written agreement between the Parties in effect at the time an Issue arises or LICENSOR may replace the Licensed Programs with the then current released version of such Licensed Programs.

- 5.0 Limitation of Liability.** LICENSOR's liability is limited as provided in the Radio Contract (SFMTA Contract 1240) and the maintenance agreement in effect at the time an event from which liability may arise occurs. Third Party Licensors' liability in contract, tort or otherwise arising out of or in connection with this Agreement or the use of the Licensed Programs shall not exceed the total license fees paid to LICENSOR by LICENSEE for the use of the Licensed Programs.

**IN NO EVENT WILL LICENSOR AND/OR ANY THIRD PARTY LICENSOR(S) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF LICENSOR AND/OR ITS THIRD PARTY LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**6.0 Term and Termination.**

- 6.1 Unless earlier terminated as provided herein, the Term of this Agreement shall be perpetual.
- 6.2 This Agreement may be terminated at any time only by written mutual agreement of the parties.
- 6.3 If LICENSEE fails to perform any obligation or undertaking to be performed by it under this Agreement and fails to correct such deficiency within thirty (30) days after notice by LICENSOR, LICENSOR may thereafter pursue any available remedy in equity or law as a result thereof.
- 6.4 Sections 3, 6, 7 and 8 of this Agreement shall survive termination.

- 7.0 Assignment/Transfer.** This Agreement, the licenses granted hereunder and the Licensed Programs provided to LICENSEE under this Agreement may not be assigned, sub-licensed, or otherwise transferred by LICENSEE to any third party without LICENSOR's prior written consent. Subject to the foregoing, any assignee hereunder shall be subject to all of the terms, conditions and provisions of this Agreement. Any attempt by LICENSEE to assign, sub-license, or transfer the Licensed Programs, or any of the rights or duties contained in this Agreement, without LICENSOR's prior written consent shall be void.

- 8.0 Severability.** If any term or provision of the Agreement is determined by a court or government agency of competent jurisdiction to be invalid under any applicable statute or rule of law, such provision(s) are, to that extent, deemed omitted, but this Agreement and the remainder of its provision shall otherwise remain in full force and effect.



- 9.0 Limitation of Actions.** [Intentionally Omitted]
- 10.0 Waiver.** No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted.
- 11.0 Exhibits.** All Exhibits attached to this Agreement are considered part of this Agreement and are incorporated by reference.
- 12.0 Export Regulations.** LICENSEE agrees to comply with all export and re-export restrictions and regulations imposed by the U.S. Government.
- 13.0 U.S. Government.** If LICENSEE is the U.S. Government, use, duplication or disclosure of the Third Party Software Products and documentation by such LICENSEE shall be subject to the terms and conditions consistent with any applicable FAR provisions, for example, FAR 52.227.19.
- 14.0 Internet Users.** Internet users under a CPU License model are prohibited from using the Third Party Software Products to develop or modify applications or perform other programming tasks.
- 15.0 Agreement.** This Agreement is part of the Radio System Contract, which is an overall purchase agreement between LICENSOR and LICENSEE for the purchase by LICENSEE from LICENSOR of a wireless communications system, which purchase agreement and this Agreement contain the full understanding of the parties with respect to the subject matter hereof and which supersede all prior understandings and writings relating thereto and which shall become binding on the Effective Date of this Agreement. No waiver, consent, modification, amendment, or change to the terms of this Software License Agreement shall be binding unless agreed to in a writing signed by LICENSEE and LICENSOR. If there is any conflict between the terms of the Radio System Contract and this Agreement or other written agreement between the Parties for the LICENSOR'S procurement of additional software for the Radio System from LICENSEE as to the Licensed Programs, the terms of the Radio System Contract or other agreement between the Parties for Software procurement will prevail.

**LICENSOR: L3HARRIS TECHNOLOGIES, INC.  
OF SAN**

**LICENSEE: CITY AND COUNTY  
FRANCISCO**

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

By:

Jeremy S. Roe  
Principal, Contracts

Jeffery P. Tumlin  
Director of Transportation  
San Francisco Municipal  
Transportation Agency

Approved as to form:

David Chiu  
San Francisco City Attorney

By: \_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney  
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## EXHIBIT A

### 1.0 Listing of Licensed Programs:

| <i>Item</i> | <i>Device</i>            | <i>Software Description</i>   |
|-------------|--------------------------|---|
| 1.          | <b>Mobile Radio</b>      | Trunking Protocol mobile device software for OpenSky, P25 and EDACSIP applications  |
| 2.          | Mobile Radio             | Conventional FM mobile device software for OpenSky, P25 and EDACSIP applications  |
| 3.          | Portable Radio           | Trunking Protocol portable device software for OpenSky, P25 and EDACSIP applications  |
| 4.          | Portable Radio           | Conventional FM portable device software for OpenSky, P25 and EDACSIP applications  |
| 5.          | OpenSky Base Station     | OpenSky Trunking Protocol base station  |
| 6.          | OpenSky Base Station     | OpenSky Conventional FM base station software   |
| 7.          | P25 Base Station         | DSP and SitePro application software for P25 trunked and conventional base station applications                                       |
| 8.          | Dispatch Console         | MaestroIP and VIP application software for OpenSky, P25 and EDACSIP applications.   |
| 9.          | Telephone Interconnect   | Telephone Interconnect software for OpenSky, P25 and EDACSIP applications.  |
| 10.         | Interoperability Gateway | VIDA Conventional and NetworkFirst application software for OpenSky, P25 and EDACSIP applications.                                    |
| 11.         | Key Management           | Network Key Management, Key Loader, and Key Administration application software for P25 applications                                  |
| 12.         | Data Gateway             | PMIPS Data Gateway application software for P25 and EDACSIP applications.   |
| 13.         | Site Management          | Network Sentry application software (including SMI, SMAC, and OS) and SiteLink application software for P25 and EDACSIP applications. |
| 14.         | Network Switching Center | VNIC, HA, MDIS, RNM/CNM, UAS, and RSM software for OpenSky, P25 and EDACSIP applications.   |

## 2.0 Listing of Third-Party Programs:

| Platform                             | Vendor and Model Number                              | Operating System     |
|--------------------------------------|--|----------------------|
| VAS / Hypervisor                     | Cisco C220 M4  | VMware               |
| SAN                                  | NetApp FAS2520                                       | DataONTAP            |
| NSS                                  | RHEL 6   | RHEL                 |
| UAS                                  | RHEL 6   | RHEL                 |
| RNM                                  | RHEL 6   | RHEL                 |
| ISSI                                 | RHEL 6   | RHEL                 |
| Active Directory Server              | Server 2012 R2 Standard                              | Windows              |
| Root CA                              | Server 2012 R2 Standard                              | Windows              |
| EPO                                  | Server 2012 R2 Standard                              | Windows              |
| KMF                                  | Server 2012 R2 Standard                              | Windows              |
| ENM                                  | CentOS 6   | CentOS               |
| SUMS 2.0                             | Server 2012 R2 Standard                              | Windows              |
| LAS/LAP                              | RHEL 6   | RHEL                 |
| Symphony                             | Symphony   | Windows              |
| VMT                                  | Cisco C220 M4<br>(N-1) Dell R420                     | Windows              |
| Network Sentry                       | NWS 4 (CM21874-4000)                                 | Windows              |
| Network (RAR)                        | SM-D-ES3-48P<br>SM-X-ES3D-48-P                       | Cisco IOS            |
| Network (RFW/IFW/SFW)                | ASA5505<br>ASA5506<br>ASA5512-X                      | Cisco IOS            |
| Network (FirePOWER) -<br>NIDS Option | ASA5506<br>ASA5512-X                                 | Cisco IOS            |
| Unitrends Ent Backup                 | 713/813  | Unitrends/RecoveryOS |
| Quest Authentication<br>Services     | N/A  | All Unix OS          |
| Defender 2 factor                    | N/A  | All OS               |
| LogLogic Syslog                      | LX820/LX1020/LX825/LX1025                            | LogLogic             |
| Spectracom Netclock                  | SecureSync   | Spectracom           |
| <b>Sybase</b>                        | Adaptive Server Enterprise<br>Small Business Edition | Windows              |
| <b>Sybase</b>                        | Adaptive Server Enterprise                           | Windows              |

**EXHIBIT B**



**PRODUCT SPECIFIC LICENSE TERMS**

Adaptive Server® Enterprise 12.5.2 (Small Business Edition, all platforms)  
("Program")

IN ADDITION TO THE LICENSE TERMS SET OUT IN THE SOFTWARE LICENSE AGREEMENT, THE FOLLOWING ADDITIONAL OR DIFFERENT RIGHTS AND ACCOMPANYING OBLIGATIONS AND RESTRICTIONS SHALL APPLY TO THE PROGRAM FOR WHICH LICENSEE HAS PURCHASED A LICENSE.

**The Program contains or is provided with component software products from both Sybase and third parties. Except as otherwise specifically authorized below, or by third parties as identified below, use of all components is limited to use in the same manner and capacity for which the Program as a whole is licensed. Additional licenses may be available from Sybase for a fee.**

**I. Terms Applicable to the Small Business Editions of the Program.** This Program is limited to use on a single Machine with a maximum capacity (as specified by the manufacturer) of four (4) CPU's or less.

**II. Developer Components.** The Program contains or is provided with the Developer Components identified below. The Developer Components are licensed without further charge for Use by one Standalone Seat for the sole purpose of testing and developing applications in a non-production environment. No production or commercial use is permitted. Use and distribution of the Distributable Components (as specified in and subject to the limitations in the Documentation) of the Developer Components is permitted without charge. Partner may Use and modify the source code version of those portions of the Developer Components that are provided as sample code (if any) for its internal use only.

| <b>Developer Components</b>           |
|---------------------------------------|
| Software Developers Kit               |
| InfoMaker® (not included on Mac OS X) |
| Physical Architect™ (not on Mac OS X) |

**III. Restricted Use Components.** The Program may contain or be provided with the Restricted Use Components identified below (depending on the platform licensed). If included, Partner is licensed without further charge to Use only one (1) copy of each Restricted Use Component on one (1) Machine. Partner may Use the Restricted Use Components solely in conjunction with its use of the Program, and subject to any Additional Restrictions set forth below.

| <b>Restricted Use Components</b> | <b>Additional Restrictions</b> |
|----------------------------------|--------------------------------|
| SQL Remote™                      |                                |

**IV. Free Download Components.** The Program includes certain third party open source and other free download components (“Free Download Components”). Partner may have additional rights in the Free Download Components that are provided by the third party licensors of those components. The Free Download Components, and any such third party licenses and other third party-required notices, are identified in the Getting Started materials that accompany the Program, and are also available at [www.sybase.com/thirdpartylegal](http://www.sybase.com/thirdpartylegal) (third party licenses and notices for Free Download Components included as part of the Developer Components and Restricted Use Components are identified under the names of those products). **THE FREE DOWNLOAD COMPONENTS ARE PROVIDED “AS IS” BY THE THIRD PARTY LICENSORS. ANY OBLIGATIONS UNDERTAKEN BY SYBASE IN THE AGREEMENT RELATING TO THE FREE DOWNLOAD COMPONENTS AS PART OF THE PROGRAM ARE PROVIDED BY SYBASE ALONE, AND NOT BY THE THIRD PARTY LICENSORS OF THE FREE DOWNLOAD COMPONENTS. NOTHING IN THE FOREGOING AFFECTS ANY PERFORMANCE WARRANTY PROVIDED BY SYBASE WITH REGARD TO THE PROGRAM AS A WHOLE.**

**EXHIBIT B**  
**(continued)**



**PRODUCT SPECIFIC LICENSE TERMS**  
**Adaptive Server® Enterprise v15.x (all editions, all platforms)**

(“Program”)

IN ADDITION TO THE LICENSE TERMS SET OUT IN THE SOFTWARE LICENSE AGREEMENT ACCOMPANYING THIS PROGRAM, THE FOLLOWING ADDITIONAL OR DIFFERENT RIGHTS AND ACCOMPANYING OBLIGATIONS AND RESTRICTIONS SHALL APPLY TO THE PROGRAM FOR WHICH LICENSEE HAS PURCHASED A LICENSE.

**The Program may contain or be provided with component software products from both Sybase and third parties. Except as set forth below, use of all components is limited to use in the same manner and capacity for which the Program as a whole is licensed. Additional licenses for Sybase components may be available from Sybase for a fee.**

**I. Limitations on Use of the Developer’s Edition and Small Business Edition of Program.**

**A. Developer’s Edition.** The Developer’s Edition of the Program is licensed for internal development and testing purposes only. Deployment licenses for any purpose (including, without limitation, usage in a general production environment or on a web server) must be purchased from Sybase before deployment of any production components contained in the Program.

**B. Small Business Edition.** The Small Business edition of the Program is limited to use on a single Machine with a maximum capacity (as specified by the manufacturer) of four (4) CPUs or fewer.

**II. Sybase Developer Components/Distributable Components/Sample Code. The Program contains or is provided with the Developer Components identified below. The Developer Components are licensed without further charge for Use by one Standalone Seat for development purposes only. Use and distribution of the Developer Components and/or the Distributable Components of the Program (as specified in and subject to the limitations in the Documentation) is permitted without charge. LICENSEE may use and modify the source code version of those portions of the Program and/or the Developer Components that are provided as sample code (if any) for its internal use only.**

|                         |
|-------------------------|
| Developer Components    |
| Software Developers Kit |
| InfoMaker®              |
| Physical Architect™     |

**III. Free Download Components.** The Program, including any Developer Components and Restricted Use Components provided with it, may include certain third party open source and other free download components (“Free Download Components”). LICENSEE may have additional rights in the Free Download Components that are provided by the third party licensors of those components. The Free Download Components and any such third party licenses and third party-required notices for the Program are identified at <http://www.sybase.com/thirdpartylegal> (third party licenses and notices for Free Download Components included as part of the Developer Components and Restricted Use Components are identified under the names of those products). Any obligations undertaken by Sybase in the Agreement relating to the Free Download Components as part of the Program are provided by Sybase alone, and not by the third party licensors of the Free Download Components.

**A. FURTHER DISCLAIMER OF WARRANTIES AND LIABILITIES.** THE FREE DOWNLOAD COMPONENTS ARE PROVIDED “AS IS” BY THE THIRD PARTY LICENSORS, WHO DISCLAIM ALL LIABILITIES, DAMAGES (EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WARRANTIES, INDEMNITIES AND OTHER OBLIGATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH REGARD TO THE FREE DOWNLOAD COMPONENTS. NOTHING IN THE FOREGOING AFFECTS ANY PERFORMANCE WARRANTY PROVIDED BY SYBASE WITH REGARD TO THE PROGRAM AS A WHOLE.