

REBANDING SERVICES AGREEMENT

(FRA IMPLEMENTATION)

This contract ("Agreement") is made this ____ day of December 2010 (the "Effective Date") by and between the City of Overland Park, Kansas, a municipal corporation of the State of Kansas, business address of 8500 Santa Fe Drive, Overland Park, Kansas, ("Incumbent,") and Harris Corporation, RF Communications Division, a Florida corporation with a business address of 221 Jefferson Ridge Parkway, Lynchburg, VA 24501 ("Contractor").

WHEREAS, pursuant to certain orders, as amended, ("Orders") issued by the Federal Communications Commission ("FCC"), certain licensees of 800 MHz frequencies used in public safety or other systems must reconfigure their systems to operate on other licensed public safety frequencies, and Nextel West Corp. ("Nextel"), a wholly owned indirect subsidiary of Sprint Nextel Corp must provide all funds necessary to provide each such licensee reconfigured facilities that are comparable to those presently in use;

WHEREAS, pursuant to the Orders, Incumbent and Nextel have entered into a Frequency Reconfiguration Agreement dated September 1, 2010, (the "Nextel FRA"), a copy of which is attached hereto as Attachment A, pursuant to which Incumbent has agreed to relinquish certain 800 MHz frequencies (the "Incumbent Frequencies") and reconfigure its system to certain replacement frequencies (the "Replacement Frequencies");

WHEREAS, Incumbent desires to engage the services of Contractor as an independent contractor to perform Reconfiguration Services (as defined below in Paragraph 3) of Incumbent Frequencies, as more specifically described in Attachment A to this Agreement; and

WHEREAS, the Nextel FRA provides that Nextel will pay all the costs of the frequency reconfiguration referenced above. It is the intent of the parties to this Agreement that the payment procedure by which Contractor receives payment for performing frequency reconfiguration services pursuant to this Agreement be consistent with the payment procedures set forth in the Nextel FRA.

NOW THEREFORE, for good and valuable consideration, the parties mutually agree as follows:

1. TERM.

This Agreement shall be effective as the Effective Date and continue until the Reconfiguration Services are substantially completed and Contractor has been paid in full, unless sooner terminated by either party as specified in Section 18 below.

2. INCORPORATED DOCUMENTS.

The parties agree that the following Attachments are expressly incorporated herein by reference:

- Attachment A – Frequency Reconfiguration Agreement dated September 1, 2010 between City of Overland Park, Kansas and Nextel.
- Attachment B – Harris Corporation, RF Communications Division Statement of Work (SOW) dated July 13, 2010.
- Attachment C – Payee Setup Form.
- Attachment D – Incumbent Acknowledgement.
- Attachment E- Standard Warranty.

3. STATEMENT OF WORK.

Contractor will perform the services described in the Statement of Work (“SOW”) attached hereto as Attachment B (the “Reconfiguration Services”) in accordance with this Agreement.

4. PERFORMANCE SCHEDULE.

Contractor will perform the Reconfiguration Services in accordance with the provisions set forth in the SOW.

5. AGREEMENT PRICE.

Contractor will perform the Reconfiguration Services at an estimated cost as further detailed in Attachment B (the “Agreement Price”).

6. INVOICING AND PAYMENT.

A. Payment Terms and Conditions. Contractor understands that (i) payments for the Reconfiguration Services shall be made directly to Contractor by Nextel on behalf of the Incumbent and (ii) in order to receive payment from Nextel for the Reconfiguration Services to be provided under this Agreement, Contractor must comply with certain terms and conditions imposed by Nextel, the FCC and the transition administrator appointed pursuant to the Orders (the “Transition Administrator”). Contractor must complete a Payee Setup Form, attached hereto as Attachment C, to provide Nextel with the information necessary to enter Contractor’s payment information into Nextel’s payment system. In order to avoid any payment delays, Contractor shall submit its completed Payee Setup Form to Nextel prior to commencing the Reconfiguration Services.

B. Invoicing. The parties agree and acknowledge that before an invoice submitted by Contractor will be paid, Nextel requires a confirmation from Incumbent (in the form of an "Incumbent Acknowledgement" attached hereto as Attachment D) that Contractor has delivered and/or performed the goods and/or services listed on the invoice and/or has achieved any required contractual milestones covered by the invoice. Contractor agrees that at the same time Contractor faxes an invoice to Sprint Nextel, Contractor also must submit a copy of the invoice to Incumbent, so that Incumbent will be able to review any invoiced goods and/or services in order to confirm their delivery and/or performance and any invoiced milestones in order to confirm their achievement and provide the required Incumbent Acknowledgement both to Nextel and to Contractor. Within ten (10) business days of receipt of Contractor's invoice, Incumbent shall fax the Incumbent Acknowledgement to both Nextel and Contractor. If Incumbent reasonably determines that any invoiced goods and/or services have not been delivered and/or performed or that any invoiced milestones have not been achieved as required by this Agreement, Incumbent will notify Contractor in writing of the reasons for that determination within ten business days of receipt of the Contractor's Invoice.

C. Invoices. Contractor acknowledges and agrees that in order to be paid, invoices must include the following information:

- Contractor's name (must match the name submitted on the Payee Setup Form submitted by Contractor to Nextel).
- Contractor's "remit to" address.
- Contractor's representative's name and contact information (for questions about the invoice).
- Incumbent's name.
- Deal Number (to be provided by Nextel).
- A detailed list of goods and/or services or milestones for which Contractor is requesting payment (broken out by line item) as well as the total sum to be paid.
- Applicable sales tax.
- Invoice date.
- Invoice number.

D. Payment. It is the parties' understanding that as provided in the Nextel FRA, within thirty (30) days after the later of Nextel's receipt of (i) Contractor's invoice and (ii) the related Incumbent Acknowledgement, Nextel will pay the Contractor's invoice on behalf of Incumbent, assuming that Contractor has complied with all applicable terms and conditions of payment imposed by Nextel, the FCC and the Transition Administrator. Unless agreed otherwise, Contractor agrees that all payment for services provided pursuant to this Agreement shall be made as direct payments from Nextel on behalf of Incumbent. Further, Contractor acknowledges and agrees that Nextel is solely responsible for any and all payments to be made to Contractor for services provided pursuant to this Agreement and that Incumbent is not responsible to pay Contractor for services provided, unless those services are specifically requested by Incumbent and are outside the scope of the Statement of Work attached hereto.

E. Sprint Nextel Letter of Credit. The parties acknowledge and understand that Nextel has obtained an irrevocable letter of credit that assures that funds will be available to fund the 800 MHz band reconfiguration required by the Orders (the "Letter of Credit") and that under certain conditions, the goods and/or services to be provided by Contractor pursuant to this Agreement are subject to being paid out of said funds. The Transition Administrator may issue draw certificates to the trustee administering the Letter of Credit (the "Trustee") for payment of reconfiguration costs if Nextel defaults on its obligation under the Orders to pay Incumbent's reconfiguration costs. Contractor agrees to look solely to the Letter of Credit as security for payment of any amounts not paid by Nextel when due under this Agreement and hereby waives its rights of lien, and agrees not to file any liens, arising out of the performance of the Reconfiguration Services against Incumbent's premises or any property belonging to Incumbent. If Nextel defaults on its payment obligations to the Contractor, and the Incumbent has provided the required Incumbent Acknowledgement to Nextel, then the Incumbent agrees to cooperate with the Contractor in its attempts to draw down on the Letter of Credit and such obligation shall survive termination of this Agreement. Nothing contained in this section shall be deemed to limit any other remedies available to Contractor at law or equity, including, without limitation, Contractor's right at its sole option to suspend its performance of the Reconfiguration Services until it has received all payments then due or to terminate this Agreement in accordance with Section 18 or 19 hereof, provided that Contractor shall not seek payment for services provided pursuant to this Agreement from the Incumbent.

7. CHANGE ORDERS.

Incumbent reserves the right at any time to make changes in the SOW or in the time or place of performance of the Reconfiguration Services. If any such change causes

an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, the Incumbent shall make an equitable adjustment in the relevant Agreement Price, the performance schedule, or both. Any such adjustment in the Agreement Price or performance schedule must be agreed to in writing by Incumbent, Contractor, Nextel and the Transition Administrator. Price increases and/or extensions of time shall not be binding upon Incumbent unless evidenced by a modification to this Agreement signed by the parties hereto in accordance with Section 31. Contractor will not be required to accomplish the agreed upon changes until a mutually agreed upon change order approved in writing by Nextel is received by the Contractor.

8. ADMINISTRATION.

A. Contractor Project Manager. Contractor shall appoint a project manager (the "Contractor Project Manager") who will provide oversight of Contractor activities conducted hereunder, who will be the principal point of contact person concerning Contractor's performance under this Agreement, and with whom the Incumbent's Project Manager shall work for the duration of this Agreement. Contractor shall notify Incumbent's Project Manager, in writing, when there is a new Contractor Project Manager assigned to this Agreement. The Contractor Project Manager's information is:

Contractor Project Manager: Danielle Marcella
Address: 7022 TPC Drive, Suite 500, Orlando, FL 32822
Phone: 407-581-3786
Fax: 407-251-8270
Email: danielle.marcella@harris.com

B. Contractor Contracting Officer. For the purposes of this Agreement, "Contractor Contracting Officer" means the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Agreement, an authorized representative of Contractor Contracting Officer acting within the limits of his/her authority.

C. Incumbent Project Manager. Incumbent shall appoint a project manager (the "Incumbent Project Manager") who will provide oversight of the activities conducted hereunder and will be the primary contact person with whom Contractor's Project Manager shall work for the duration of this Agreement. Incumbent shall notify Contractor's Project Manager, in writing, when there is a new Incumbent Project Manager assigned to this Agreement. The Incumbent Project Manager's information is:

Incumbent Project Manager: Deputy Chief Mark Kessler
Address: 12400 Foster, Overland Park, Kansas 66213-6941
Phone: 913-895-6834
Fax: _____
E-mail: mark.kessler@opkansas.org

D. Incumbent Contract Administrator. For the purposes of this Agreement, "Incumbent Contract Administrator" shall mean that person designated by the Incumbent to administer this Agreement on behalf of Incumbent and the person to whom signature authority has been delegated. The Incumbent Contract Administrator is Deputy Steve Smith.

E. Contractor Limited Certification. Contractor hereby certifies to the best of its knowledge, and based on information provided to Contractor by Incumbent, that portions of the services to be performed or products to be supplied by Harris Corp, as described in Schedule C and Scheduled D to the FRA, are a reasonable estimate of the services and equipment reasonably necessary as of the date of the FRA to complete satisfactorily the rebanding of the Incumbent's radio system as required by the FCC Order.

9. SUBCONTRACTORS.

Nothing herein shall prohibit Contractor from subcontracting any or all of its duties and obligations hereunder, provided that it notifies the Incumbent in writing when a service is being subcontracted. In no event shall the existence of a subcontract release or reduce the liability of Contractor to Incumbent for any breach in the performance of Contractor's duties or. Contractor shall be liable for any loss or damage to Incumbent, including but not limited to personal injury, physical loss, harassment of Incumbent's employees, or violations of the Infringement and Confidentiality sections of this Agreement occasioned by the acts or omissions of Contractor's subcontractors, their agents or employees. Section 25 (Publicity) shall apply to all subcontractors.

10. EXCUSABLE DELAYS.

Contractor shall not be responsible for delays or failures in performance under this Agreement that are due to causes beyond its reasonable control including, but not

limited to, acts of God, war, acts of terrorism, fires, severe weather, floods, strikes, blackouts, - embargoes or work performed on Contractor equipment by third parties not authorized by Contractor to perform such work. In the event such delays or failures interrupt Contractor's services to Incumbent, Contractor shall promptly notify Incumbent of the circumstances and the anticipated delay. In the event of such delay, the time of delivery or of performance shall be extended by mutual agreement of the parties for a reasonable time period to compensate for the time lost by Contractor by reason of the delay.

11. ACCESS TO WORK SITES.

Incumbent will provide access to the Incumbent's sites as reasonably requested by Contractor so that it may perform its duties in accordance with the SOW and other terms and conditions of this Agreement. Contractor acknowledges that security rules and regulations will be in effect for the sites, as developed and promulgated by Incumbent from time to time. Contractor agrees, for itself, its employees, subcontractors, Contractors, visitors, and invitees, to comply strictly with all rules and regulations of Incumbent in effect from time to time of which Contractor has been given prior written notice. Contractor also agrees to only utilize staff to perform duties set forth in this Agreement who meet the criminal background requirements of the Incumbent, provided the Contractor has been provided prior written notice of such criminal background requirements.

12. GRATUITIES.

Contractor and its employees shall not, with the intent to influence the recipients in the conduct of their official duties, extend any gratuity or special favor of monetary value to any officer, employee or other representative of Incumbent, Nextel, the Transition Administrator or the FCC.

13. LIENS.

Contractor shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by Contractor under this Agreement and shall, to the fullest extent allowed by law, at its expense, keep Incumbent's premises and all property belonging to Incumbent free and clear of any and all liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, suppliers, Contractors, or subcontractors under this Agreement. If Contractor fails to release and discharge any lien or threatened lien against Incumbent within five (5) working days after receipt of written notice from Incumbent to remove such claim of lien, Incumbent may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Incumbent any and all costs and expenses of Incumbent in so doing, including reasonable attorneys' fees

incurred by Incumbent; provided further, Incumbent may take any other actions and/or remedies it deems necessary to protect its interests.

14. RISK OF LOSS.

Title and risk of loss of any replacement equipment or upgraded equipment purchased in accordance with Section 40 below (“Upgraded Equipment”) to be provided by Contractor as part of the Reconfiguration Services shall pass to Incumbent upon delivery to Incumbent.

15. ACCEPTANCE.

Final acceptance of the Reconfiguration Services shall occur upon substantial completion of the Reconfiguration Services in accordance with the SOW and successful completion and written acknowledgement by Incumbent of the acceptance testing provided and required in the SOW. Incumbent and Contractor shall memorialize final acceptance of the Reconfiguration Services by promptly executing a final acceptance certificate.

16. WARRANTIES.

Contractor warrants that all products and services provided under this Agreement, including the Upgraded Equipment, shall be warranted to Incumbent in accordance with the terms and conditions set forth in the document attached hereto as Attachment E.

THE WARRANTY SET FORTH IN THIS SECTION 16 IS CONTRACTOR’S SOLE WARRANTY UNDER THIS AGREEMENT AND IS IN LIEU OF ANY AND ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY CLAIM UNDER THIS WARRANTY MUST BE FILED WITHIN THE PERIOD SPECIFIED IN ATTACHMENT E.

17. DEFAULT.

If Contractor fails to perform a material obligation under this Agreement, Incumbent may consider Contractor to be in default (unless an Excusable Delay as provided for in Paragraph 10 above causes the failure) and may assert a default claim by giving Contractor written notice of default. Contractor will have thirty (30) days after receipt of the notice of default either to cure the default or, if the default is not curable within thirty (30) days, to provide a written cure plan within (30) thirty days. Contractor will begin implementing the cure plan immediately after receipt of notice by Incumbent that it approves the cure plan. If Contractor fails to cure the default, unless otherwise agreed in writing, Incumbent may terminate this Agreement for default. In

the event of termination for default, Incumbent may acquire the Reconfiguration Services elsewhere on terms and conditions or in such manner as Incumbent may deem appropriate, and Contractor shall be liable to Incumbent for any excess cost or other expense incurred by Incumbent in such acquisition. The rights and remedies of Incumbent under this section are in addition to other rights and remedies provided by law or this Agreement.

18. AGREEMENT TERMINATION.

A. Termination for Cause based on Default or Breach. A default or breach may be declared with or without termination. This Agreement may be terminated for cause by either party upon written notice of default or breach to the other party as follows:

1. If Contractor substantially fails to provide or satisfactorily perform any of the material conditions, work, deliverables, or services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements;
2. If the other party becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court;
3. If the Incumbent materially breaches any material duty under this Agreement including, without limitation, its duty to issue the Incumbent Acknowledgements in a timely manner or if Nextel fails to make any payments on behalf of the Incumbent when such payments are due; or
4. If Nextel defaults under the Letter of Credit.

B. Incumbent's Termination for Convenience. Incumbent may terminate this Agreement for convenience and without cause at any time after giving Contractor ninety days written notice, provided Contractor shall be paid for all performance of services and all Upgraded Equipment delivered to Incumbent through the date of termination.

C. Winding Up Affairs Upon Termination. In the event of termination of this Agreement for any reason, the parties agree that the provisions of this paragraph survive termination:

1. The parties shall account for and properly present to each other all claims for amounts due, charges, costs, fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Agreement. Neither party may withhold performance of winding up

provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

2. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Incumbent;

3. Contractor shall promptly deliver into Incumbent's possession all proprietary information in accordance with Section 24, Confidentiality.

D. Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of default upon the other party.

19. REMEDIES.

A. In the event of a material breach of this Agreement by Contractor which shall continue for thirty (30) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Contractor by Incumbent, Incumbent shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its payment obligations under the Agreement for as long as the breach continues uncorrected; or (2) terminate this Agreement by written notice to Contractor if the breach remains uncorrected.

B. In the event of: (1) any failure by Incumbent to provide the Incumbent Acknowledgement when due, (2) Sprint Nextel's failure for thirty (30) or more days to make payment when due, or (3) any other material breach of this Agreement by Incumbent which shall continue thirty (30) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Incumbent by Contractor, Contractor shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Agreement) and either: (1) suspend performance of its obligations under this Agreement for as long as the breach remains uncorrected; or (2) terminate this Agreement by written notice to Incumbent if the breach remains uncorrected.

20. LIMITATION OF LIABILITY.

A. The total liability of Contractor, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability or otherwise, arising

out of, connected with, or resulting from the performance or non-performance of this Agreement or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any hardware, software, or the furnishing of any service shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00).

B. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL CONTRACTOR, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE HARDWARE OR ANY OTHER EQUIPMENT AND DOWNTIME COST.

C. Contractor shall not be liable for costs incurred for repair and/or replacement of equipment that fails or becomes inoperative due to negligence on the part of the user, liquid intrusion, lightning damage, user installations, user removals and/or acts of God, acts of terrorism or work performed by third parties not authorized by Contractor to perform work on Contractor equipment. Contractor shall not be liable for costs incurred for correcting, replacing or repairing equipment damaged and/or data corruption induced and/or caused by 3rd party personnel or other equipment / systems not provided by Contractor.

D. The provisions of this Section 20, LIMITATION OF LIABILITY, shall apply notwithstanding any other provisions of this Agreement and any other agreement.

E. The provisions of this Section 20, LIMITATION OF LIABILITY, shall survive the expiration or termination of this Agreement.

F. Nothing contained herein shall limit the liability of Contractor to persons not a party to this Agreement, for their valid claims for loss due to death, personal injury, or tangible property damage.

21. INDEMNIFICATION.

A. Definitions

For purposes of the following indemnification requirements, the term "Loss" shall have the meaning set forth below:

“Loss” shall mean any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys fees) in connection with any action, proceeding, demand or claim (collectively “Claims”) made by a third party for injury, including death, to any third party or third parties or damages to or loss of, or loss of the use of, tangible property of any third party person, firm, or corporation which arises out of or is connected with the performance of this Agreement whether arising before or after the completion of the work required hereunder.

B. Indemnity

For purposes of this Agreement, Contractor agrees to indemnify, defend and hold harmless the Incumbent, its employees and agents from any and all Losses where the Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or willful misconduct of Contractor or its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees arising out of or in connection with the performance of this Agreement whether arising before or after the completion of the work required hereunder. Incumbent shall give Contractor prompt written notice of the receipt of any claim and the exclusive right, at Contractor’s option and expense, to defend or settle all Claims.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the Incumbent or any third party and further notwithstanding any theory of law including, but not limited to, a characteristic of the Incumbent’s or any third party’s joint concurring or contributory or comparative fault or negligence as either passive or active in nature, provided, however, that Contractor’s obligation hereunder shall not include amounts attributable to the fault or negligence of the Incumbent or any third party for whom Contractor is not responsible.

In the case of any Claims against the Incumbent, its employees or agents indemnified under this Section 21, by an employee of Contractor or its affiliates or subsidiaries or subcontractors/assignees, the indemnification obligation contained in this Section 21 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or its affiliates, subsidiaries, or subcontractors/assignees set forth hereunder or otherwise permitted.

22. PATENTS, TRADEMARKS, INFORMATION.

A. Contractor shall, at its own expense, hold harmless, defend and indemnify Incumbent against any claim, suit or proceeding (collectively, "Suit"), costs, expenses, damages and liabilities including reasonable attorneys fees, arising out of, resulting from or pertaining to any claim that the hardware, equipment and software furnished by Contractor under this Agreement or any part thereof (collectively, "Property") infringes any patent, copyright or trademark or service mark recognized under the laws of the United States of America or any state thereof or that any licensed use of the Property is claimed to violate any statute, rule, regulation or ordinance or defame or slander any person. Incumbent shall give Contractor prompt written notice of the receipt of any Suit and the exclusive right, at Contractor's option and expense, to defend or settle all Suits. Contractor shall pay all damages and costs awarded against Incumbent in connection with such Suit, but shall not be responsible for any compromise made without its written consent. If the use of any Property is enjoined, terminated or modified, then Contractor, at its own expense and option, shall either: (i) procure for Incumbent the right to continue the use of such Property; or (ii) modify the Property so that it becomes non-infringing; or (iii) provide to Incumbent functionally equivalent property; or (iv) achieve an equitable arrangement with Incumbent in view of the impact such injunction or limitation may have on Incumbent's ability to use the Property for its intended purpose. The forgoing indemnification does not apply where such Suit is based solely on any modification, change or alteration of the Property made by Incumbent, or upon Incumbent's use of any Property other than as contemplated herein or as otherwise permitted by Contractor in writing.

B. Nothing in this Agreement shall be construed as conferring a right to Incumbent to use in advertising, publicity or otherwise any trademark or trade name of Contractor.

23. DISPUTES.

If a claim, dispute, or other matter in question arises out of this Agreement, which the parties are unable to resolve through mutual, good faith, negotiations each party shall be free to pursue such legal remedies as the party believes it is entitled to under the terms of this Agreement.

Each party acknowledges that jury trials are slower and more expensive than court trials without juries, and, considering the complex nature of the technology and other issues which may give rise to disputes, the parties agree that any court proceedings commenced by or against either party shall be resolved by a court without a jury, and each party waives its right to a jury as to any disputes or claims arising under or relating to this Agreement, whether for breach or enforcement of contract, tort or otherwise, including all disputes as defined herein.

24. CONFIDENTIALITY.

A. Incumbent agrees not to disclose, provide or otherwise make available to any third party any specification, drawings, sketches, models, samples, tools, confidential business information or data, or any technical information provided to Incumbent under the provisions of this Agreement (hereinafter “Confidential Information”), and to hold such materials in confidence using a strict degree of care to protect the Confidential Information from unauthorized disclosure.

B. Incumbent’s obligation with respect to disclosure of Confidential Information shall terminate with respect to any Confidential Information which Incumbent can show was rightfully in its possession prior to the disclosure made by Contractor, or which subsequently came into its possession through a third party under no obligation of confidentiality to Contractor, or which was independently developed by employees of Incumbent who did not have access to Confidential Information or which becomes a matter of public knowledge other than as a breach of any obligation owed to Contractor, or which is disclosed with the prior written permission of Contractor.

C. Notwithstanding the obligations on disclosure and use set forth herein, Incumbent may disclose Confidential Information to third parties insofar as is necessary to satisfy a proper court order, subpoena, litigation discovery demand or administrative or regulatory proceeding order (including, without limitation, a freedom of information request under the Kansas Open Records Act), provided that Incumbent promptly notifies Contractor in writing of such order or demand prior to any disclosure and takes advantage of all available and appropriate measures to prevent further disclosure of the Confidential Information. Should the Incumbent receive a request for such information pursuant to the provisions of the Kansas Open Records Act, it shall notify the Contractor of the request so that Contractor may take such action as it deems necessary to protect its Confidential Information.

D. The provisions of this Section 24 shall survive the expiration or termination of this Agreement.

25. PUBLICITY.

The selection of Contractor to perform the Reconfiguration Services pursuant to this Agreement is not in any way an endorsement of Contractor or Contractor's Reconfiguration Services by Incumbent and shall not be so construed by Contractor in any advertising or other publicity materials. Contractor agrees to submit to Incumbent, all advertising, sales promotion, and other publicity materials relating to this Agreement and the Reconfiguration Services furnished by Contractor wherein Incumbent's name is mentioned, language is used, or Internet links are provided from which the connection of Incumbent's name therewith may, in Incumbent's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Incumbent prior to such use.

26. INDEPENDENT CONTRACTOR.

Contractor is associated with the Incumbent only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted services pursuant to this Agreement. Contractor is and shall be an independent contractor and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Incumbent whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

27. LICENSING STANDARDS.

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Agreement.

28. COVENANT AGAINST CONTINGENT FEES.

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling broker of Contractor. In the event Contractor breaches this section, Incumbent shall have the right to either annul this Agreement without liability to Incumbent, or, in Incumbent's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

29. PROHIBITED AGREEMENTS.

Contractor has not entered, and agrees not to enter, into any agreement or arrangement with Incumbent: (i) pursuant to which Contractor agrees, in exchange or as consideration for Incumbent's selection of Contractor to perform the Reconfiguration Services, to pay or convey to Incumbent or any third party a kickback or anything else of value or to provide to Incumbent any services or equipment not required as part of or directly related to the Reconfiguration Services at non-commercial rates or at no charge; or (ii) which includes artificially inflated prices or, Contractor knows or has reason to know, is based upon a false statement of work, an inaccurate inventory count or an incorrect description of the Reconfiguration Services, including, but not limited to, the equipment or locations to be reconfigured.

30. ASSIGNMENT; SUCCESSORS AND ASSIGNS.

This Agreement shall not be assigned by either Party without the written consent of the other Party, which shall not be unreasonably withheld or delayed, provided the Incumbent has had a reasonable opportunity to vet the qualifications and financial stability of the proposed assignee. Notwithstanding the above, Contractor may assign this Agreement, without consent, (a) in whole or in part, to an affiliate or subsidiary or (b) in the event of a change of controlling ownership interest (either directly or indirectly) in Contractor or in the event of merger, recapitalization, consolidation, other business combination or sale of all or substantially all of the assets of Contractor.

31. AUTHORITY FOR MODIFICATIONS AND AMENDMENTS.

No modification, amendment, alteration, addition, or waiver of any section or condition of this Agreement or the SOW shall be effective or binding unless it is in writing and signed by Incumbent and Contractor. Unless otherwise notified by the Incumbent in writing, only the Incumbent Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Agreement or the SOW on behalf of Incumbent.

32. WAIVER.

Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of the right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

33. SEVERABILITY.

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or

portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

34. NON-EXCLUSIVE REMEDIES.

The remedies provided for in this Agreement shall not be exclusive but are in addition to all other remedies available under law.

35. HEADINGS AND SECTION REFERENCES.

The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers.

36. AUTHORITY TO EXECUTE AGREEMENT.

Each party represents to the other party that such party has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of such party.

37. GOVERNING LAW AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas excluding its rules pertaining to conflicts of laws. Contractor and Incumbent consent to the personal jurisdiction of the state and federal courts in the State of Kansas, which courts shall constitute the exclusive forum for all court proceedings involving the enforcement of this Agreement and the resolution of all disputes related to the subject of this Agreement, whenever, wherever and however arising, whether at law, in equity or otherwise and whether the dispute involves an alleged breach of contract, violation of law or tort of any kind.

38. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be deemed validly given upon being hand delivered, or upon receipt if sent by facsimile or if mailed by certified mail, return receipt requested. Notices shall be sent to the representatives named below or any subsequent representative for which notice was provided pursuant to this section.

Contractor

Incumbent

FCC Rebanding Project Manager
Harris Corporation
7022 TPC Drive Suite 500
Orlando, Fl. 32822

Deputy Chief Mark Kessler
12400 Foster
Overland Park, Kansas 66213-2629

With a copy that shall not constitute notice to:

Senior Counsel
Harris Corporation
221 Jefferson Ridge Parkway
Lynchburg, VA 24501

And to:

Kevin P. Joyce, Esq.
Brown Rudnick LLP
One Financial Center
Boston, MA 02110

39. COMPLIANCE WITH APPLICABLE LAWS.

Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Incumbent will obtain and comply with all required FCC licenses and authorizations.

40. OPTION TO UPGRADE EQUIPMENT.

Incumbent may, at its sole option, elect to pay for and to receive, as a substitute for equipment to be delivered by Nextel pursuant to the SOW, a package of Upgraded Equipment as will be set forth on that certain "Overland Park Rebanding Upgrade - Final Proposal" (the "Upgrade Proposal") to be delivered to Incumbent by Contractor. Should Incumbent elect to substitute any Upgraded Equipment for equipment to be delivered by Nextel, Incumbent covenants and agrees to pay the corresponding upgrade cost set forth on the Upgrade Proposal directly to Contractor, as further specified on the invoice that will accompany or be delivered in conjunction with any Upgraded Equipment. Harris will be solely responsible for the handling and shipping of replaced and Upgraded Equipment and will notify Sprint of the upgrade upon completion of all shipments to Overland Park. The parties agree that the total amount of the Upgrade Proposal shall not exceed the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00).

41. ENTIRE AGREEMENT.

A. This Agreement together with the documents incorporated herein pursuant to Article 3, Incorporated Documents, contains the entire and only agreement between the parties concerning the subject matter hereof, and all prior representations and understandings in connection with the subject matter hereof are superseded and merged herein, and any representation or understanding not incorporated herein shall not be binding upon either party.

B. CONTRACTOR DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE PROVISION OF THE SERVICES AND OTHER PROVISIONS OF THIS AGREEMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING CONTRACTOR'S MANUFACTURER'S REPRESENTATIVES AND SALES AGENTS) TO ASSUME FOR CONTRACTOR ANY OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

[SIGNATURE PAGE FOLLOWS]

INCUMBENT

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Michael R. Santos, Deputy City Attorney

CONTRACTOR

HARRIS CORPORATION, RF COMMUNICATIONS DIVISION

By:
Name: _____
Dated: _____

Approved as to form:

Phil Beeson, Senior Counsel