

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

107



**FROM:** Riverside County Information Technology

**SUBMITTAL DATE:**  
August 17, 2010

**SUBJECT:** Sole Source Approval of FX Software Maintenance Agreement to provide continued maintenance and support for the 800 MHz EDACS Radio System

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and execute the Harris Corporation software maintenance agreement with Dailey Wells being the authorized seller and service provider, to support the operation of the current EDACS 800 MHz Public Safety Radio System for two years in the amount of \$190,000; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

**BACKGROUND:**

(Continued on Page 2)

*Greg R. Stoddard*  
**Greg R. Stoddard**  
**Chief Technology Officer**

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 190,000.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0.00	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0.00	For Fiscal Year:	2010/11

<b>SOURCE OF FUNDS:</b> RCIT Operational Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** **APPROVE**

**County Executive Office Signature** BY: *Serena Chow*  
Serena Chow

Consent     Policy  
 Consent     Policy

Dept't Recomm.:  
 Per Exec. Ofc.:

**Prev. Agn. Ref.:** 3.21 6/07, 3.28 3/05 | **District:** A11 | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**3.33**

FORM APPROVED COUNTY COUNSEL  
 BY: *NEA KIPNIS*  
 Departmental Concurrence  
 DATE: 8/19/10  
 Purchasing: *Mary Seller, Assistant Director*

**BACKGROUND (Continued):**

RCIT owns and operates an 800 MHz public safety trunked radio system. The current MA/COM system provides communication services to various public safety agencies within the County including the Sheriff and Fire Departments. This system will require continued maintenance and support until the new PSEC system is implemented in June of 2012.

To keep this system at the highest level of functionality, and provide the software tools needed by County technical staff to maintain, an annual agreement is offered by the manufacturer to provide the software updates and telephone technical support at a fixed annual fee. Dailey Wells is the Single-Point-Of-Contact (SPOC) for FX-related issues under this agreement.

Under this agreement, all upgrade costs will be covered for our current radio system, and there will be no additional software or firmware costs. This service will be in place until such time the new Motorola system is in place.

Dailey & Wells is the only authorized reseller and service provider in this geographical region for the Harris Corporation, M/A-COM EDACS 800 MHz Public Safety Radio System.

**PRICE REASONABLENESS:**

Annual cost for the FX Software Maintenance is \$125,000. Dailey-Wells is extending to the County of Riverside a discount off the annual renewal of \$30,000 dollars per year, for a total cost savings of \$60,000. A two-year agreement in the total amount of \$190,000 is needed to continue support of the current system.

**REVIEW/APPROVAL:** Purchasing and County Counsel concur with this request.



RIVERSIDE  
COUNTY  
INFORMATION  
TECHNOLOGY

We help make Riverside County run.

Matthew W. Frymire  
Chief Information Officer

## Memorandum

**To:** Mark Seiler, Assistant Director

**Date:** 08/18/2010

**Via:** Rebecca Gibson, Procurement Contract Specialist

**From:** Greg Stoddard, Chief Technology Officer

**Subject:** Sole Source Procurement; Request for FX Software Maintenance Agreement for M/A-COM EDASC 800 MHz Radio System

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

- 1. Supply/Service being requested:**  
FX Software Maintenance and Support for the M/A-COM EDASC 800 MHz radios.
- 2. Supplier being requested:**  
Harris Corporation with Dailey Wells being the authorized seller and service provider.
- 3. Alternative suppliers that can or might be able to provide supply/service:**  
None, this is a sole source only available through this reseller by the Manufacturer, Harris Corporation (formerly M/A-COM)
- 4. Extent of market search conducted:**  
Purchasing tried to obtain competitive quotes and when none were found, contacted the manufacturer, Harris Corporation, and was told that Dailey Wells is the only authorized reseller of the FX Software Maintenance Agreement.
- 5. Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:**  
Current M/A-COM EDASC 800 MHz radio system requires continued maintenance and support until the new PSEC system is implemented.
- 6. Reasons why my department requires these unique features and what benefit will accrue to the county:**  
To maintain this system, RCIT radio technicians utilize various software and hardware tools to monitor, configure, and repair the network and subscriber equipment. Upgrades and improvements in software and firmware are constantly being made by the manufacturer, thus improving features or correcting errors that are reported by the users. Under this agreement, all upgrade costs will be covered for our current radio system, and there will be no additional software or firmware costs.

**PAGE 2**  
**SOLE SOURCE PROCUREMENT**

**7. Price Reasonableness:**

Annual cost for the FX Software Maintenance is \$125,000. Dailey Wells is giving the County of Riverside a discount of \$30,000 dollars off that cost for the annual renewal amount of \$95,000. A two year agreement in the total amount of \$190,000 is needed to continue support of the current system.

**8. Does moving forward on this product or service further obligate the county to future similar contractual arrangements?**

No

  
\_\_\_\_\_  
Greg Stoddard, Chief Technology Officer

18-AUG-10

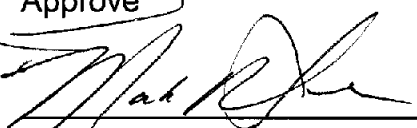
\_\_\_\_\_  
Date

*Purchasing Department Comments:*

Approve

Approve with Condition/s

Disapprove

  
\_\_\_\_\_  
Mark Seiler, Assistant Director

Aug 23, 2010  
\_\_\_\_\_  
Date



## SOFTWARE FX AGREEMENT

FX Sales Order No.  
Customer P.O. No.

THIS SOFTWARE FX AGREEMENT ("Agreement") is hereby entered into between Harris Corporation, a Delaware Corporation, through its RF Communications Division ("Seller") and County of Riverside, CA ("Subscriber") on the following terms and conditions:

### 1. SCOPE OF AGREEMENT

During the term of this Agreement, as set forth in Section 7, Seller agrees to provide Subscriber with software updates, documentation updates and other services, as set forth in Section 3 of this Agreement, for the software developed and provided by Seller and contained within the Subscriber's Designated Seller System(s) as described in Schedule A to this Agreement.

### 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

- A. "Contract" means the agreement for the purchase of the Designated System(s).
- B. "Current Software Release Levels" means the most recent Software release announced by Seller as being commercially available. "Commercially available" does not include interim releases provided as emergency fixes or software released for beta test or noncommercial or similar purposes.
- C. "Designated System(s)" means the Seller system(s) purchased by Subscriber and identified in Schedule A to this Agreement. The Designated System does not include Vendor Products, Excluded Products or other systems to which the Designated System may be linked.
- D. "Encrypted Features" means those SOFTWARE product features which are not included as part of the standard Seller system component or radio product software and which are activated by Seller only upon their being licensed to Subscriber. Examples of such features are Landline Data for the Seller system components and Priority System Scan for the Seller portable radios.
- E. "Licensed Programs" means all Seller Software programs and associated documentation nonexclusively licensed to Subscriber by Seller for use solely with Subscriber's Designated System, under one or more licenses, for which services are to be provided hereunder.
- F. "Software" means computer programs contained on a magnetic tape, semiconductor device or other memory device or system memory consisting of: (a) hardwired logic instructions which manipulate data in a processor and control input-output operations and error diagnostic and recovery routines, and (b) instruction sequences in machine-readable code that control transaction processing, peripheral equipment and administration and maintenance functions, as well as associated documentation used to describe, maintain and use the programs.
- G. "SOFTWARE FX Classification" means the classification of Subscriber's Designated System(s) within categories of system type and complexity, as defined by Seller from time to time, for the purpose of determining Subscriber's annual SOFTWARE FX Fee.

- H. "Updates" means any commercially available corrections, modifications or enhancements to the Licensed Programs generally released and/or provided by Seller.
- I. "Seller Network Solutions Provider" (NSP) means a person or entity authorized by Seller to sell certain Seller products and systems as an authorized NSP in accordance with the provisions of a NSP Agreement between Seller and such person or entity.
- J. "SOFTWARE FX" means the software maintenance program entered into between Seller and the subscriber as described in this document.

### 3. DESCRIPTION OF SOFTWARE FX PROGRAM FEATURES

- A. Software Releases Included. With respect to each Licensed Program, and subject to the conditions of this Agreement, Seller will provide the Software Updates described below during the term of this Agreement. All Updates shall be shipped to Subscriber's SOFTWARE FX contact designated in Schedule A of this Agreement via protective packaging containing a quantity of programmed Software media (e.g., Proms, Tapes, Compact Discs or diskettes) necessary for Subscriber to fully implement the Software Updates within its Designated System. In addition, each shipment of Software Updates shall contain at least one set of Software release notes detailing the contents of the Software Update and providing installation instructions. All Software Updates and documentation shipped to Subscriber shall be considered part of the Licensed Programs, shall be subject to the terms and conditions of the nonexclusive licenses granted by Seller to Subscriber, and Seller shall be free to license others with respect thereto.
  - i. Software Updates Upon Enrollment. As determined by the system audit described in Section 3.C.i. of this Agreement, Seller shall provide to Subscriber the Software Updates needed, if any, to bring the Licensed Programs within Subscriber's Designated System up to Seller's Current Software Release Levels. Such Updates will be provided at no additional cost to Subscriber provided Subscriber has enrolled in the SOFTWARE FX program within the enrollment deadline specified in Section 4.A of this Agreement and provided Subscriber has installed, at Subscriber's expense, the compatible hardware necessary to accommodate the Software Updates.
  - ii. Subsequent Software Updates. During the term of this Agreement and subject to Subscriber's performance of its obligations, Seller shall provide to Subscriber Software Updates, released by Seller subsequent to Subscriber's enrollment in SOFTWARE FX, for the Licensed Programs contained within Subscriber's Designated System. Such subsequent Software Updates may include:
    - a. Enhancements and/or corrections to existing features for all Designated System backbone components and/or radios;
    - b. New features implemented via the system components already contained within Subscriber's Designated System, including unencrypted features for the system backbone components and/or unencrypted features for the radio products.
  - iii. Software Replacements. In the event any Software media contained within Subscriber's Designated System incurs damage, whether from acts of Nature or human error, Seller shall provide replacements for such Software to Subscriber at no additional charge, subject to the terms and conditions of this Agreement.
- B. Software Releases Not Included. The following Software releases are not included within the terms of this Agreement:
  - i. New Products. Any Software products released by Seller for which an earlier generation or release level is not already contained within Subscriber's Designated System. If Subscriber wishes to implement such Software products within its Designated System, it will need to license such products

at the fees then in effect and purchase any necessary compatible hardware for operation of such Software.

- ii. Encrypted Features. Encrypted features for Seller's products are not included under this Agreement. Such features must be licensed separately by Subscriber at the fees then in effect.
  - iii. Third Party Software. To the extent that such Vendor Products are available and compatible with the Designated System, Seller reserves the right to charge an additional fee for upgrades to software programs that are licensed by a third party for use with the Seller system yet are not the property of Seller.
- C. Services Included. Subject to the terms and conditions of this Agreement and Subscriber's compliance therewith, Seller will provide to Subscriber the services described below. Unless otherwise indicated, these services are provided to Subscriber at no additional charge.
- i. System Configuration Baseline and Documentation Update. As part of the initial enrollment process for SOFTWARE FX, Seller may deem it necessary to conduct a system audit of Subscriber's Designated System(s) to be covered under this Agreement. If said audit is required, Seller, or its Seller Network Solutions Provider will conduct the audit. . This audit will be used to verify Subscriber's first-year SOFTWARE FX Fee and to determine the Software release levels for Licensed Programs contained within Subscriber's System at the time of enrollment, together with any hardware updates necessary to accommodate Software Updates. .
  - ii. SOFTWARE FX Features Summary. Prior to the general release by Seller of any Software Updates, Seller shall make available a SOFTWARE FX Features Summary announcing the impending release, and detailing its contents and impact, if any, on any other Seller hardware or Software components. Subscriber acknowledges that older hardware may not have sufficient capacity for the operation of the Software Updates. NOTHING IN THIS AGREEMENT OR OTHERWISE REQUIRES SELLER EITHER TO DESIGN UPDATES THAT REMAIN COMPATIBLE WITH DESIGNATED SYSTEM HARDWARE OR TO PROVIDE ADDITIONAL HARDWARE UNDER THIS AGREEMENT, AND SUBSCRIBER WAIVES ANY SUCH DUTY OR OBLIGATION BY SELLER.
  - iii. Installation Phone Support. Subscriber's SOFTWARE FX subscription shall include telephone support by Seller's Technical Assistance Center (TAC) personnel with respect to the installation of Software Updates. Such support will be available during Seller's normal business hours (8:00 a.m. to 5:00 p.m. Eastern Standard Time Monday through Friday, excluding holidays) and for a period of ninety (90) days from the date the Software Update is released to Subscriber. After-hours emergency support will be available through Sellers optional System Maintenance services at prices then in effect, provided that Subscriber is in compliance with the terms of this Agreement.
  - iv. Upgrade Planning. If Subscriber is in compliance with the terms of this Agreement and its Designated System is classified as a Single Node Network or higher, upon request by Subscriber, Seller, or its Network Solutions Provider, shall provide an annual consultation service at Subscriber's site to review Seller's planned Software releases and evaluate the operational and financial impact such releases may have on Subscriber's Designated System. If Subscriber is in compliance with the terms of this Agreement and its Designated System is classified below a Single Node Network, upgrade planning is not included within the terms of this Agreement but can be obtained from Seller at the rates then in effect for such service.
- D. Services Not Included. The following services/products are not included within the terms of this Agreement:

- i. Installation of Terminal Software Updates. Installation of Software Updates to terminal products is not included, but such installations may be obtained through Seller, or its Network Solutions Provider, at the rates then in effect for such service provided that Subscriber is in compliance with the terms of this Agreement.
- ii. Installation of System Software Updates. Installation of System Software Updates by Seller is not included, but such installations may be obtained from Seller, or its Network Solutions Provider, at the rates then in effect for such service, provided that Subscriber is in compliance with the terms of this Agreement.
- iii. Hardware Upgrades. In the occasional event that a Software Update released requires a corresponding hardware change, Subscriber will need to purchase separately the compatible hardware required. Seller will endeavor to notify Subscriber in advance via the SOFTWARE FX Features Summary or, if applicable, via SOFTWARE FX's upgrade planning service of any hardware changes needed in order to implement a Software Update. No such notice will be given for Vendor Products or Excluded Products, and no hardware upgrade may be available.
- iv. Optional Support Services. Other Software support services Subscriber may require, including, but not limited to, training, customized software programming or troubleshooting through Seller's Technical Assistance Center are outside the scope of this Agreement but may be obtainable through other programs offered by Seller.
- v. Remote Site Transportation Costs. For those sites that are not readily accessible by motor vehicle and require special transportation arrangements in order to gain access for Designated System audits, Subscriber will be responsible, at its expense for providing transportation to the site and reasonable lodging and other support where same day service is not reasonably available.

#### 4. CONDITIONS FOR SERVICE

- A. Enrollment Deadline. Subscriber agrees to enroll in SOFTWARE FX no later than sixty (60) days after the earlier of: (i) the first expiration date of the warranty provided by Seller for any component of Subscriber's Designated System, or (ii) the first expiration date of the warranty provided by Seller for any of the Software within Subscriber's Designated System. If either such warranty already has expired when Subscriber is first offered the SOFTWARE FX Program, Subscriber will be given a 60-day grace period in which to enroll in SOFTWARE FX. A Subscriber meeting the enrollment deadline will receive, at no additional charge as described in Section 3.A.i. of this Agreement; the Software Updates needed to bring its Designated System up to Seller's Current Software Release Levels to the extent the Designated System hardware is compatible with such Software Updates.
- B. Subscriber Contact. Seller requests that Subscriber identify its Subscriber Contact in Section 5.B. of Schedule A to this Agreement. Subscriber shall designate a person with sufficient technical expertise to be able to interact knowledgeably with Seller's technical support personnel. To the maximum extent practicable, Subscriber's communications with Seller (with regard to the Software Updates provided under this Agreement) should be through the Subscriber Contact.
- C. Installation. Subscriber agrees to properly install the Software Updates provided by Seller in order of receipt from Seller. Subscriber understands that Software support provided by Seller is limited to Seller's Current Software Release Levels of Licensed Programs for the Designated System.
- D. Media Labeling. Subscriber agrees that if it makes copies of any Software Update supplied by Seller, for backup purposes, Subscriber will reproduce any copyright notice and/or proprietary notice appearing on and/or in such Update and will label all copies with all information, including part numbers and revision levels, provided on the set of media provided by Seller. Nothing herein grants Subscriber any right to



sublicense any Software or to distribute copies to any other person, and such sublicensing and distribution is expressly prohibited.

- E. No Modification of Software. Subscriber agrees not to modify, enhance or otherwise alter any Software unless specifically authorized in the user documentation provided by Seller with such Software Update or unless the prior written consent of Seller is obtained. Under no circumstance shall Subscriber create or permit the creation of any derivative work from any Software or the reverse engineering or replication of any Software.
- F. Seller's obligations under this Agreement are conditional upon Subscriber's compliance with the terms of this Agreement and any Contract then in effect between Seller and Subscriber.

## 5. FEES, TERMS OF PAYMENT & TAXES

- A. SOFTWARE FX Fee. Subscriber agrees to pay Seller or its Network Solutions Provider a two year SOFTWARE FX Fee, in the amount set forth in Schedule A to this Agreement, plus taxes pursuant to Subsection E below, for SOFTWARE FX services provided during the term as defined in Schedule A. Subsequent years' SOFTWARE FX Fees, beyond Subscriber's initial two-year fee specified in Schedule A, may or may not remain at the same rates. Any changes made to Subscriber's Designated System(s) or mobile equipment which results in their falling into another SOFTWARE FX Classification will be reflected in the following year's SOFTWARE FX Fee. If Seller's rates for SOFTWARE FX should increase, Subscriber will be notified in writing of any such increases at least one hundred twenty (120) days prior to the end of Subscriber's yearly SOFTWARE FX period then in effect.
- B. Other Charges. Subscriber understands that if it chooses to delay its enrollment in SOFTWARE FX beyond the deadline described in Section 4.A. of this Agreement, Subscriber will need to license, at the applicable fees then in effect, the initial Software Updates needed to bring its System up to Seller's Current Software Release Levels, as well as any hardware which may be required to accommodate such Updates.
- C. Due Date. Subscriber's two-year SOFTWARE FX Fee will be invoiced upon receipt of this Agreement signed by Subscriber. Payment will be due thirty (30) days from the date of the invoice. Subscriber's subsequent years' SOFTWARE FX Fees will be automatically invoiced sixty (60) days prior to the commencement of the subsequent year's term. Payment of all amounts due is a condition precedent to Seller providing any future Software Updates or other services.
- D. Payment Terms. Payment shall be made in United States currency. All amounts over thirty (30) days past due shall accrue interest from the due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as is the maximum permissible rate under applicable law). In addition to payment of interest, Subscriber agrees to pay all collection costs and enforcement expenses, including reasonable attorneys' fees, if Seller must bring a proceeding to collect any amount owed by Subscriber or to enforce any rights in any bankruptcy or similar proceeding involving Subscriber.
- E. Taxes. In addition to all fees specified herein, Subscriber shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Subscriber, unless Subscriber shall otherwise furnish Seller with a tax-exemption certificate acceptable to the applicable taxing authorities.
- F. Discontinuance. Subscriber understands that if Subscriber discontinues and then subsequently resumes participation in the SOFTWARE FX Program, Subscriber will be required to pay a re-entry fee for any benefits provided to Subscriber upon re-entry to the SOFTWARE FX Program plus the SOFTWARE FX Fee for the term then commencing.

## 6. TITLE

The Licensed Programs and all copies thereof, in whole or in part, and all Software, documents and materials which may be provided by Seller hereunder for use in connection with such Programs are furnished nonexclusively as part of the Licensed Program(s) defined in the applicable software license agreement(s) and shall remain the exclusive property of Seller and will be held in confidence by Subscriber in accordance with the provisions of each such software license agreement. Under no circumstance shall Subscriber create or permit the creation of any derivative work from any Software or the reverse engineering or replication of any Software.

## 7. TERM & TERMINATION

- A. SOFTWARE FX services will be provided by Seller to Subscriber for an initial two-year term, as defined in Schedule A to this Agreement, and thereafter on a year-to-year basis as provided herein, subject to prior payment in full of all outstanding fees and charges at the time of renewal and compliance with the provisions of this Agreement.
- B. Provided Subscriber is then in full compliance with all of its obligations, Subscriber's SOFTWARE FX enrollment shall be automatically renewed at the end of the initial two- year term for an additional year's term and on a succeeding yearly basis thereafter unless either party notifies the other in writing, at least ninety (90) days prior to the end of the yearly period then in effect, that this Agreement will not be renewed.
- C. Seller shall have the right to suspend or terminate this Agreement upon thirty (30) days' prior written notice if Subscriber fails to pay any fees or charges due hereunder or if Subscriber commits any other breach of this Agreement or commits any breach of any applicable Software license agreement for any Licensed Program being supported under this Agreement, any contract between Subscriber and Seller or any other obligation of Subscriber to Seller or any of its affiliates.
- D. Seller shall have the right to discontinue providing SOFTWARE FX services (including Updates) for any Licensed Program supported under this Agreement. Software Updates may be discontinued at any time at Seller's discretion. Other services shall not be discontinued without at least ninety (90) days' prior written notice by Seller to Subscriber. Notwithstanding any other provision of this Agreement, as Subscriber's sole and exclusive remedy Seller will provide a pro-rata refund of Subscriber's annual SOFTWARE FX Fee if Seller elects to discontinue providing SOFTWARE FX services for any Licensed Program supported under this Agreement.
- E. Except as provided in Section 7. D. above, under no circumstances (including any termination of this Agreement) shall any fees paid pursuant to this Agreement be refundable once paid by Subscriber.

## 8. SOFTWARE WARRANTY

Seller warrants, for a period of ninety (90) days from delivery of a Software Update, that any Software furnished to Subscriber shall be capable of successfully operating on the designated hardware in accordance with the logic defined in the operator's manuals or other supporting documentation when Subscriber's Designated System is supplied with correct input data. If, on the basis of evidence submitted to Seller within the 90 day term of this warranty, it is shown that any Software does not meet this warranty, Seller, at its option, will either correct the defect or error in the Software free of charge and provide a corrected Software Update, or make available to Subscriber a satisfactory 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 FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY, ALL OF WHICH ARE WAIVED IN FULL BY SUBSCRIBER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES,**

**OR FOR ANY LOST PROFITS OR REVENUES OR OTHER INDIRECT ECONOMIC PREJUDICE, OR FOR ANY EQUITABLE REIMBURSEMENT OR RECOVERY, ALL OF WHICH ARE HEREBY WAIVED IN FULL BY SUBSCRIBER.**

## **9. LIMITATION OF LIABILITY**

The total liability of Seller, including its subcontractors or suppliers, for all direct or indirect claims of any kind for any loss, cost, expense, liabilities, or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability, equity or otherwise, directly or indirectly arising out of, connected with, or resulting from the performance or non-performance of this Agreement (or any related software license agreement) or from the furnishing of any good or service pursuant to this Agreement (or any related software license agreement) shall not exceed the amount of the most recent annual SOFTWARE FX Fee paid by Subscriber under this Agreement. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY, EQUITY, OR OTHERWISE, SHALL SELLER OR ITS AFFILIATES, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, VENDORS, SUBCONTRACTORS OR SUPPLIERS, BE DIRECTLY OR INDIRECTLY LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS, INTEREST, ATTORNEYS FEES OR LITIGATION COSTS OR CLAIMS OF SUBSCRIBER'S CUSTOMERS FOR SUCH DAMAGES. The provisions of this Section, Limitation of Liability, shall apply notwithstanding any other provisions of this Agreement (or any related software license agreement). The terms and provisions of this Section shall survive the termination or expiration of this Agreement.

## **10. CONFIDENTIALITY**

- A. Subscriber agrees not to disclose, provide or otherwise make available to any third party any Software or portion thereof, or any technical information provided to Subscriber 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. Subscriber's obligation with respect to disclosure of Confidential Information shall terminate with respect to any Confidential Information which Subscriber can show was rightfully in its possession prior to the disclosure made by Seller, or which subsequently came into its possession through a third party under no obligation of confidentiality to Seller, or which was independently developed by employees of Subscriber 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 Seller, or which is disclosed with the prior written permission of Seller.
- C. Notwithstanding the obligations on disclosure and use set forth herein, Subscriber 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, provided that Subscriber promptly notifies Seller 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.
- D. The provisions of this Section shall survive the expiration or termination of this Agreement.

## **11. FAILURE TO ENFORCE**

The failure of either party to enforce, at any time or for any period of time, any provision of this Agreement in accordance with its terms shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each and every such provision.

## **12. GOVERNING LAW AND DISPUTE RESOLUTION**

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its rules pertaining to conflict of laws. Subject to the provisions of Subsection A, Subscriber consents to the personal jurisdiction of the state and federal courts in California, 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.
- B. 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.

## **13. NO THIRD PARTY BENEFICIARIES; ASSIGNMENT**

The provisions of this Agreement are solely for the benefit of Subscriber and Seller. No other person or entity is intended to be a beneficiary of nor is entitled to rely upon or enforce any of the provisions of this Agreement or to assert any claim for nonperformance of this Agreement by any party. This Agreement may not be assigned by either Seller or Subscriber without the prior written consent of the other party. The provisions of this Agreement shall inure to the benefit of and be binding upon Subscriber and Seller and their respective permitted successors and permitted assignees (if any).

## **14. 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, e-mail or if mailed by certified mail, return receipt requested, to Subscriber at the address set forth in Schedule A or to Harris Corporation at 221 Jefferson Ridge Parkway, Lynchburg, VA. 24501, Attention: Software Services Group, or to such other address as either party may designate to the other in writing.

## **15. ENTIRE AGREEMENT, EXECUTION AND MODIFICATION**

- A. This Agreement 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. This Agreement shall not become effective until signed on behalf of Seller by one of its officers or by an executive duly authorized by Seller's Vice President. No change, modification, ratification, rescission, or waiver of this Agreement or any of the provisions hereof shall be binding upon Seller unless made in writing and signed on its behalf in like manner.
- C. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SOFTWARE OR SERVICES OTHER THAN THOSE EXPRESSLY STATED IN

THIS AGREEMENT, AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING SELLER'S NETWORK SOLUTIONS PROVIDERS OR SUBCONTRACTORS OR SUPPLIERS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

**SELLER:**

**HARRIS CORPORATION  
RF COMMUNICATIONS DIVISION**

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

Name: Doug Hernandez

Title: Contracts Manager

Date: 7/30/10

Harris Corporation  
RF Communications Division  
221 Jefferson Ridge Parkway  
Lynchburg, VA. 24501

**SUBSCRIBER:**

**COUNTY OF RIVERSIDE, CA**

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

Name: Marion Ashley

Title: Chairman, Board of Supervisors

Date:

FORM APPROVED COUNTY COUNSEL  
BY:  \_\_\_\_\_ DATE 8/18/10  
NEAL R. KIPNIS

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**SOFTWARE FX  
AGREEMENT  
SCHEDULE A**

*1. Term of SOFTWARE FX Agreement*

The services, as described in the SOFTWARE FX Agreement to which this Schedule A is attached, will be provided for the initial period beginning 6/18/10 and ending 6/17/12 and will be automatically renewed for one-year periods thereafter pursuant to Section 7 of the Agreement.

*2. Designated System.*

The Designated System(s) for which the SOFTWARE FX Agreement will apply is (are):

System Name	System Classification	System Location
Riverside County	EDACS	Riverside County, CA
	N/A	
	N/A	
	N/A	
	N/A	
	N/A	
	N/A	



3. *SOFTWARE FX Fees*

The two-year SOFTWARE FX Fee for the above Designated System(s) is as follows:

System Name	SOFTWARE FX Option	System Fee
Riverside County	SSSV1G2	\$190,000.00

Subscriber's subsequent years' SOFTWARE FX Fees will be determined in accordance with Section 5.A. of the Agreement.

4. *Fiscal Year Billing Option*

If Subscriber requests billing for the first and subsequent years' SOFTWARE FX Fees coincident with Subscriber's fiscal year, please indicate the fiscal year end date:

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If this option is selected, Subscriber's initial SOFTWARE FX term will be from the effective date shown in Section 1 of this Schedule A through the next fiscal year end date and the first-year SOFTWARE FX Fee will be prorated accordingly.

5. *Designated Subscriber Contact(s)*

A. All notices regarding the SOFTWARE FX Agreement to which this Schedule A is attached are to be sent by Harris Corporation to:

Contact's Name: Trish Byrd  
Title: Radio Operations Supervisor  
Address: 7195 Alessandro Blvd  
(Do not use P.O. Boxes) Riverside, CA 92506  
Telephone: (951) 955-1086  
FAX No.

B. All Software Updates to be provided by Seller to Subscriber under this Agreement are to be sent to (if different than 5.A. above):

Contact's Name:

Company Name:

Title:

Address:

(Do not use P.O. Boxes)

Telephone:

FAX No.

6. This Schedule A is agreed to by:

Seller:

Harris Corporation  
RF Communications Division  
221 Jefferson Ridge Parkway

Lynchburg, VA. 24501

Subscriber Name:

County of Riverside

2980 Washington St.

Riverside, CA 92504

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

Name: *David Hernandez*  
Title: *Contracts Manager*

Date: *7/30/10*

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

Name:

Title:

Date: