

Service & Access Agreement

SERVICE AND ACCESS AGREEMENT

BY AND BETWEEN

M/A-COM PRIVATE RADIO SYSTEMS, INC.

AND

CITY OF CLEARWATER, FLORIDA

Dated as of 1st of July, 2002

SERVICE AND ACCESS AGREEMENT

This SERVICE AND ACCESS AGREEMENT ("Service Agreement") effective as of the 1st day of July, 2002, by and between **M/A-COM PRIVATE RADIO SYSTEMS, INC.**, a Delaware corporation ("**M/A-COM**") duly authorized to do business in the State of Florida, and **CITY OF CLEARWATER, FLORIDA**, a Florida municipal corporation (**CITY OF CLEARWATER**).

NOW THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth and intending to be legally bound, the Parties hereto agree as follows:

I. INTERPRETATION

1.1 DEFINITIONS

In this Service Agreement, the following terms shall have the following respective meanings:

"Affiliate" means any other entity or person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity or person.

"CITY OF CLEARWATER", "CITY" or "City" means the City of Clearwater, Florida, U.S.A., a municipal corporation in the State of Florida, U.S.A.

"Communications System" means the communications facilities, equipment and other improvements described in Schedule A hereto, under System Description.

"M/A-COM" means M/A-COM Private Radio Systems, Inc., and any successors or assigns thereto as permitted hereunder.

"Connectivity" means City of Clearwater leased or City owned telephone lines or fiber network used to connect equipment to the Communications System.

"Contract Documents" means this Service Agreement and all Schedules incorporated herein.

"Effective Date" means the effective date of this Service Agreement, which is the date set forth in the opening paragraph hereof.

"Existing Contracts" means City of Clearwater contracts and agreements for hardware maintenance, support services and construction as identified in Schedule B hereto.

"Existing System" means all of the assets comprising the existing CITY OF CLEARWATER owned EDACS system but not including any FCC Licenses.

"HVAC" means Heating Ventilation and Air Conditioning.

"Upgrade" means all of the assets comprising the hardware and services associated with an upgrade to the Existing EDACS System.

"FCC" means the Federal Communications Commission, or any other similar or successor agency of the federal government administering the Communications Act.

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"FCC Licenses" means the Licenses currently held by CITY OF CLEARWATER or issued in the future to CITY OF CLEARWATER for use of spectrum at 800 MHz to provide radio communications.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, and any entity exercising executive, legislative, judicial, regulatory or administration functions of or pertaining to government.

"Initial Term" means the initial contract term as defined in Section 2.1.

"Parties" means the parties to this Service Agreement and **"Party"** means either one of them.

"Quarterly Payments" means the fees that CITY OF CLEARWATER agrees to pay four times a year as set forth in Section 7.2 hereto.

"Secured Debt" means any obligations issued by M/A-COM, or its Affiliates, which are secured in whole or in part by payments made by CITY OF CLEARWATER pursuant to this Service Agreement.

"Service Agreement" means this Service and Access Agreement and all Schedules hereto, as the same may be amended and supplemented from time to time as provided herein.

"Term" means the Initial Term and the Term Extension(s) as permitted in Section 2, if any.

"Third Party Tower Tenants" means eligible tower users to which M/A-COM, CITY OF CLEARWATER, or third-party Tower Owner provides equipment space on one or more of the associated towers usually for a fee or other consideration.

"UPS" means Uninterruptible Power Supply.

1.2 OTHER DEFINITIONS

Other terms used in this Service Agreement shall have the respective meanings given such terms herein.

1.3 SCHEDULES

The following is a list of the schedules attached to and incorporated into this Service Agreement and deemed to be a part of this Service Agreement (the "Schedules"):

Statement of Work: Schedule A contains M/A-COM's statement of work that includes the following parts: Overview - an outline of project responsibilities; System Description - a description of the current CITY OF CLEARWATER system. CITY OF CLEARWATER tower sites information is also discussed in this document;

Transition Plan - the transition plan that is suggested by M/A-COM;

Future Maintenance Plan - the maintenance plan that will be followed by M/A-COM; and

Determination of Service Levels - the service levels which M/A-COM agrees to perform.

Existing Contracts: Schedule B describes all contracts and agreements relating to the Existing System.

Revenue Sharing Agreement: Schedule C outlines the terms and conditions associated with the sharing of revenue from existing or future Third Party Tower Tenants and/or Third Party Subscribers described in Section 8.3 herein.

Tower Agreement: Schedule D provides the tower use agreement

User Gear: Schedule E lists the User Gear to be provided by M/A-COM to the CITY OF CLEARWATER at no additional charge.

1.4 PARTIES' ADDRESSES

All notices under this Service Agreement shall be in writing and shall be deemed to have been duly given upon being delivered personally or upon receipt if mailed by certified mail, return receipt requested. Notices shall be sent to the representative's named below or any subsequent representative for whom notice was provided pursuant to this section.

If to M/A-COM, to:

M/A-COM Private Radio Systems, Inc.
3315 Old Forest Road
Lynchburg, Virginia 24501
Fax: 434-385-2182

If to City of Clearwater, to:

City Manager
City of Clearwater
112 S. Osceola Ave
Clearwater, Fl. 33756
Fax: 727-562-4052

1.5 ORDER OF PRECEDENCE

In the event of a conflict between the terms and conditions of any of the Contract Documents, the controlling terms and conditions shall be, in descending order or precedence, those of:

- **The Service Agreement.**
- **The Statement of Work.**
- **The Tower Agreement.**
- **The Revenue Sharing Agreement.**
- **Existing Contracts.**

1.6 TIME

In this Service Agreement, unless otherwise specifically stated in the context of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

II. TERM

2.1 INITIAL TERM

The Term shall begin on the Effective Date and shall terminate at the end of the CITY OF CLEARWATER'S fiscal year, 20 years after the Effective Date, unless extended in accordance with Section 2.2. *7/1/2002*
9/30/2022

2.2 TERM EXTENSION

The Term of this Service Agreement may be extended by one (1) additional term of five (5) years beyond the Initial Term on such terms and conditions to which the Parties mutually agree. CITY OF CLEARWATER shall notify M/A-COM whether it intends to extend this Service Agreement at least one year prior to the end of the Term.

III. M/A-COM RESPONSIBILITIES

3.1 PROVISION OF SERVICES

In consideration for the fees and charges as set forth in Section 7.0 hereto, subject to the limitations, qualifications and exclusions set forth in this Service Agreement (including the Schedules), M/A-COM shall use its best efforts to provide the following products and services which shall be referred to jointly as the Services:

- access to the Communications System
- the products and services provided herein, including all schedules

3.2 SERVICE LEVELS

M/A-COM shall ensure that its performance of the Services will meet or exceed the applicable Service Levels to be determined in accordance with the procedures set forth in Schedule A hereto.

3.3 EXISTING CITY OF CLEARWATER CONTRACTS

To the extent permitted, CITY OF CLEARWATER shall assign to M/A-COM the Existing Contracts in Schedule A.

- A. M/A-COM may with the exception of the two existing tower leases, at its expense, cancel, substitute, amend, or request CITY OF CLEARWATER to cancel, substitute or amend, any Existing Contracts as long as such change does not result in degradation of Services Levels to CITY OF CLEARWATER, which change must be approved by the CITY OF CLEARWATER prior to execution of a change, and which approval shall not be unreasonably withheld.
- B. CITY OF CLEARWATER will indemnify M/A-COM for any loss M/A-COM may incur relating to the Existing Contracts attributable solely to periods prior to the Effective Date and thereafter if not incurred as a result of any default of M/A-COM.
- C. CITY OF CLEARWATER will continue to pay existing contract obligations as customary when they become due.

3.4 OPERATION

- A. The Communications System shall at all times be operated in accordance with all appropriate rules and regulations, and in such a manner as not to cause interference, of any kind, with present transmissions of radio or television broadcasts in the area of the sites, or the transmission or reception of radio, television, microwave and other communication signals as conducted on the Effective Date of this Service Agreement by existing tower users of CITY OF CLEARWATER. M/A-COM shall not violate or subject the CITY OF CLEARWATER to any violation of any federal, state or local law currently in effect or promulgated including, but not limited to, laws, rules or regulations

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pertaining to electromagnetic radiation communications or telecommunications.

If the operations conducted by M/A-COM under this Service Agreement shall at any time cause any such interference or violation of law, M/A-COM shall immediately, at M/A-COM's own expense, take all steps necessary to remedy such situation and/or eliminate such interference and will hold the CITY OF CLEARWATER harmless from any such abridgement.

- B. CITY OF CLEARWATER will attempt to mitigate and use its best efforts to manage the resolution of any matter relating to interference with CITY OF CLEARWATER transmission or reception of signals, or damages or related costs arising therefrom caused by others. M/A-COM shall provide CITY OF CLEARWATER all necessary technical assistance in identifying the source of such interference and recommendations as to how to resolve such interference.
- C. M/A-COM shall maintain the Communications System in accordance with the plan described in Schedule A hereto and in accordance with all applicable laws, including the Communications Act, as amended, and FCC rules and regulations.

3.5 M/A-COM AND SUBCONTRACTOR PERSONNEL

- A. M/A-COM shall designate a person to whom all communications from CITY OF CLEARWATER may be addressed and who has the authority to act for M/A-COM in connection with all aspects of this Service Agreement (the "M/A-COM Manager"). M/A-COM may replace the M/A-COM Manager at any time during the Term, upon 30 days prior written notice to CITY OF CLEARWATER. In the event of such replacement, a resume of the replacement person will be provided to CITY OF CLEARWATER for approval, which will not be unreasonably withheld.
- B. M/A-COM shall, at all times, employ qualified and sufficient personnel for completing work in the manner and time required.
- C. CITY OF CLEARWATER shall have the right to review and approve or reject any subcontractor utilized by M/A-COM in the maintenance of or any subsequent construction or upgrade to the Communications System, which approval shall not be unreasonably withheld.
- D. CITY OF CLEARWATER retains the option to require the removal from the City's premises of any employee, subcontractor or other person the CITY OF CLEARWATER deems inappropriate for any reason whatsoever.

3.6 SOFTWARE ENHANCEMENTS

M/A-COM shall provide, at no cost to CITY OF CLEARWATER all applicable standard FX Agreement software enhancements released during the Term of the Service Agreement, and will

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implement such upgrades on the Communications System as mutually agreed. Software upgrades timing will not exceed five years. New features, such as but not limited to, Extended Addressing for site equipment, and Secure Key must be purchased separately by the CITY OF CLEARWATER at prices indicated on the State of Florida contract #725-001-01-1 pursuant to which M/A-COM provides Products and services from its catalog at a discount of no less than 25% of their list prices.

All software upgrades will not cause any obsolescence or degradation of any equipment, service or usability of the CITY OF CLEARWATER assets or equipment being used. Otherwise, all upgrades will be backwards compliant as not to degrade or make equipment obsolete. M/A-COM has the right to not implement that part of an upgrade if the software upgrades include new features and functionality that is not supported by the City's existing equipment, or causes obsolescence or degradation to the City's existing equipment. The CITY OF CLEARWATER may at its option and expense, choose to replace equipment to support any new features and functionality if so desired.

3.7 HARDWARE ENHANCEMENTS AND REPLACEMENT

M/A-COM at its expenses will replace only the site communications system equipment (not including towers) as referenced in Schedule A within three years, as needed to maintain the grade of service as called for in this Service Agreement. The twelve (12) existing CITY OF CLEARWATER consoles will be digitally enhanced within ninety (90) days of signing this Service Agreement. The remaining control station consoles (~ twenty-five (25) units) fall under the classification of user equipment and therefore, may be upgraded at the CITY's discretion and expense. These hardware enhancements and replacements are in consideration for the sole marketing rights and use of the two towers, including the termination of payments pertaining to the existing lease for the State of Florida System for the initial 20 year term.

Pursuant to an executed Tower Agreement (Schedule D), tower maintenance shall be performed by M/A-COM at its expense.

IV. CITY OF CLEARWATER RESPONSIBILITIES

4.1 PAYMENTS TO M/A-COM

CITY OF CLEARWATER shall make Quarterly Payments to M/A-COM as provided in Section 7.1 hereof.

4.2 OPERATIONAL PLANS

CITY OF CLEARWATER shall cooperate with M/A-COM in the implementation of all project and operational changes and, where the change requires CITY OF CLEARWATER agreement, consent or approval, such agreement, consent or approval shall be in writing and shall not be unreasonably withheld.

4.3 TOWER AND SITE FACILITIES

- A. **Existing Tower and Site Facilities Equipment:** The City agrees to provide to M/A-COM under Schedule D free and unfettered access to and use of the communications towers and the site facilities equipment (shelters and generators) identified and further described in Schedule A twenty-four (24) hours per day, seven (7) days per week for consideration and transfer of user gear and system enhancements as defined in section 7.2 hereof.

M/A-COM will have the ability to market and share revenues received from these sites, per provisions of Sections 8.3 and 8.4 herein, for a period of not more than the term of this Service Agreement.

During the term of the Service Agreement, the City will use its best efforts to:

- (1) Maintain all underlying ground or other instruments necessary to operate and market the towers;
- (2) Make modifications to the ground leases as the City determines is necessary;
- (3) Execute any reasonable instruments necessary to support the Service Agreement including assignment agreements as the City deems necessary, certificates of estoppel, etc.;
- (4) Have underlying property owners maintain a zero rental or nominal lease rate;

4.4 ACCESS TO SITES

CITY OF CLEARWATER shall provide, at no cost, access for M/A-COM to all lands, buildings or structures (including, without limitation, towers) owned, leased or controlled by CITY OF CLEARWATER as may be necessary for M/A-COM to fulfill its obligations pursuant to this Service Agreement and in compliance with existing leaseholders interests. Necessity is to be determined by the CITY OF CLEARWATER.

4.5 CITY OF CLEARWATER SYSTEM MANAGER

CITY OF CLEARWATER shall designate a contact person ("CITY OF CLEARWATER System Manager") who shall be the primary interface with M/A-COM. CITY OF CLEARWATER may designate a new System Manager at any time during the Term upon providing M/A-COM with 30 days prior written notice.

4.6 COMMUNICATIONS SYSTEM USE PLANNING

During the Term of this Service Agreement, CITY OF CLEARWATER shall notify M/A-COM of any CITY OF CLEARWATER sponsored or mandated activities, changes, plans or events that may affect the operations of the Communications System.

4.7 USE OF FACILITIES AND SUPPORT SERVICES

CITY OF CLEARWATER shall, at no charge to M/A-COM:

- A. Provide access to and use of the facility locations described in Schedule A, 24 hours a day, seven days a week
- B. M/A-COM shall comply with all policies and procedures governing access to and use of CITY OF CLEARWATER facilities.
- C. CITY OF CLEARWATER shall maintain the required connectivity, as set forth in Schedule A, in good operating condition.
- D. Upon entering into this Agreement and the Tower Agreement (Schedule D), any and all obligations of M/A-COM to make lease payments to the CITY OF CLEARWATER pursuant to that lease between the CITY OF CLEARWATER and M/A-COM dated _____ shall terminate although such lease shall remain in full force and effect. In no event shall M/A-COM be considered a Third Party Tower Tenant.

4.8 REGULATORY APPROVALS

CITY OF CLEARWATER and M/A-COM shall cooperate to obtain all regulatory licenses, consents and approvals reasonably necessary for the ownership and operation of the Communications System. CITY OF CLEARWATER shall pay all charges, fees and taxes in regard to obtaining such licenses, consents and approvals.

In addition, CITY OF CLEARWATER and M/A-COM shall cooperate in obtaining the use of needed sites including, but not limited to, all zoning and land use permits relating to the Communications System.

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4.9 CITY OF CLEARWATER DISCLOSURE RESPONSIBILITIES

CITY OF CLEARWATER shall make available to the extent and manner allowed by § 119.01, Florida Statutes, all financial records and other data or information to M/A-COM as related to the terms of this agreement and beyond the scope of this agreement only if needed to satisfy SEC compliance.

V. REPRESENTATIONS

5.1 M/A-COM REPRESENTATIONS

M/A-COM represents and warrants to CITY OF CLEARWATER that:

- A. **Organization:** M/A-COM is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. M/A-COM is duly registered as a foreign corporation in the State of Florida, is authorized to do business in the State of Florida, and is in good standing in said state.
- B. **Authority:** M/A-COM has full power and authority to enter into this Service Agreement to consummate the transactions contemplated hereby. The execution, delivery and performance by M/A-COM of this Service Agreement have been duly authorized by all requisite corporate action. This Service Agreement has been duly executed and delivered by M/A-COM, and constitutes a valid and binding obligation of M/A-COM, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.
- C. **No Violation:** To the best of M/A-COM's knowledge and belief, neither the entering into of this agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by M/A-COM of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any Governmental Authority.
- D. **Litigation:** To the best of M/A-COM's knowledge and belief, there is no pending or threatened litigation which if adversely decided to M/A-COM would have a materially adverse effect upon M/A-COM's ability to meet its obligations pursuant to this Service Agreement.

5.2 CITY OF CLEARWATER REPRESENTATIONS

CITY OF CLEARWATER represents and warrants to M/A-COM that:

- A. **Organization:** CITY OF CLEARWATER is a City duly organized within the State of Florida.
- B. **Authority:** CITY OF CLEARWATER has full power and authority to enter into this Service Agreement to consummate the transactions contemplated hereby. The execution, delivery and performance by CITY OF CLEARWATER of this Service Agreement have been duly authorized by all requisite City action. This Service

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Agreement has been duly executed and delivered by CITY OF CLEARWATER and constitutes a valid and binding obligation of CITY OF CLEARWATER, enforceable in accordance with its terms.

- C. **No Violation:** To the best of the CITY OF CLEARWATER's knowledge and belief, neither the entering into of this agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by CITY OF CLEARWATER of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any Governmental Authority.
- D. **Litigation:** To the best of the CITY OF CLEARWATER's knowledge and belief, there is no pending or threatened litigation which if adversely decided to CITY OF CLEARWATER would have a materially adverse effect upon CITY OF CLEARWATER ability to meet its obligations pursuant to this Service Agreement.
- E. **Existing System:** The Existing System is in good operating condition with no material coverage problems or material maintenance problems. The Existing System has been maintained by CITY OF CLEARWATER under contract with Communications International in accordance with the manufacturers recommended maintenance including the upgrading of all software to the latest version.

VI. MEETINGS, REPORTING AND RECORDS

6.1 MEETINGS

Within 30 days following the Effective Date, the Parties will mutually determine an appropriate set of periodic meetings to be held between CITY OF CLEARWATER and M/A-COM. At a minimum, these meetings will be quarterly maintenance, performance reviews and management meeting to review M/A-COM's current Service Levels, operating parameters and such other matters as appropriate. All meetings will have a published agenda prepared by M/A-COM issued sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare for the meeting.

6.2 REPORTING

The Parties will mutually determine an appropriate set of periodic reports to be issued by M/A-COM to CITY OF CLEARWATER. At a minimum, the following reports shall be provided on a quarterly basis:

- A. CITY OF CLEARWATER System usage;
- B. Service request and resolution;
- C. Corrective maintenance;
- D. System outage report;
- E. Service Level performance; and
- F. Third Party Tower and Site Facility utilization.

6.3 RECORDS

- A. M/A-COM shall maintain books, records and other compilations of data pertaining to the requirements of this Service Agreement to the extent and in such detail as shall substantiate claims for payment under this Service Agreement. All such records shall be kept for a period of five years or for such longer period as is specified herein. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later.
- B. M/A-COM shall make available all financial records and other data and information kept pursuant to paragraph A of this Section, 6.3, or as otherwise needed by the CITY OF CLEARWATER as related to the terms of this agreement.
- C. This provision shall survive the expiration or earlier termination of this Service Agreement.

VII. CHARGES AND EXPENSES

7.1 QUARTERLY PAYMENTS

CITY OF CLEARWATER shall make Quarterly Service & Access Payments in the amount of fifty-thousand dollars (\$50,000) without set-off or withholdings and without demand or notice from M/A-COM. The first payment shall be due on the first business day of the first month after execution of this service agreement and each successive payment shall automatically be due per calendar quarter. Such payment shall be reviewed and adjusted annually to reflect current usage and performance and changes in the Consumer Price Index (CPI) - All Urban Consumers index.

The above Service and Access Payments shall be subject to increase should the system design change or be modified at any time during the term of the agreement as agreed to by both Parties.

The above listed Service and Access Fee is based on a quantity of up to fourteen-hundred fifty (1,450) CITY OF CLEARWATER radios utilizing the communications system. For each radio over fourteen hundred fifty (1,450), CITY OF CLEARWATER will be charged an additional \$15 per month per radio in addition to the cost of the subscriber unit itself.

7.2 SYSTEM ENHANCEMENTS AND USER GEAR TRANSFER

The system enhancements and transfer of user gear are being granted to the CITY OF CLEARWATER from M/A-COM based on the sole marketing rights and use of the two towers, including the termination of payments pertaining to the existing lease for the State of Florida System for the initial 20 year term.

7.2.1 M/A-COM shall transfer ownership of all enhancements or improvements made to the elements of the Communications System together with any enhancements made to the Existing System as required in Sections 3.6 and 3.7 hereof.

7.2.2 M/A-COM shall transfer ownership of the User Gear as set forth on Schedule E on a mutually agreeable schedule to the CITY OF CLEARWATER.

7.3 TOWER AND MAINTENANCE

M/A-COM shall have the sole marketing rights of the two CITY owned towers and associated tower site facilities equipment as more fully described and subject to the limitations set forth in Schedules A and D. During the term of the agreement, M/A-COM shall be responsible for tower maintenance and any enhancements or improvements made to the towers and associated site equipment if needed.

7.4 EVENT OF NON-APPROPRIATION

The CITY shall provide in its budget request that it submits each year a line item providing for Quarterly Payments which shall become due in the next succeeding Fiscal Year. This Service

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Agreement shall automatically terminate at the end of then current Fiscal Year if a final budget is not approved in accordance with Florida law that appropriates sufficient funds for the line item providing for the Quarterly Payments for the succeeding Fiscal Year. Such action shall constitute an Event of Non- Appropriation. Upon the occurrence of an Event of Non-Appropriation, the CITY will not be obligated to make the Quarterly Payments beyond the then current Fiscal Year. The CITY must deliver notice of the Event of Non-Appropriation to M/A-COM and its assigns within at least thirty business days thereof. Under no circumstances shall the failure of the CITY to appropriate monies to make Quarterly Payments constitute an Event of Default by the City hereunder or require payment of a penalty; provided, however, that the City, at M/A-COM's request, shall promptly transfer ownership of all Communications System backbone equipment including, without limitation, the Radio System Infrastructure listed in Schedule A to M/A-COM and continue to provide to M/A-COM free and unfettered access to and use of the towers and site facilities so that M/A-COM may continue to market the towers, serve then existing Third Party Tower Tenants or add additional or different Third Party Tower Tenants as well as maintain and use M/A-COM's equipment on or about the towers for the remaining period of the initial 20 year term.

In the event of any termination, M/A-COM shall continue to fully perform its maintenance and service obligations under the Service Agreement so long as the CITY continues to pay amounts equivalent to the Quarterly Payments.

7.5 TAXES

Taxes imposed by any taxing authority relating to the Services shall be the responsibility of M/A-COM. CITY OF CLEARWATER shall cooperate with M/A-COM in attempting to obtain any possible exemptions from taxes or reduction in such taxes.

VIII. REVENUE SHARING

8.1 MARKETING RIGHTS

M/A-COM shall have the sole right to market the tower and site facility space of the Communications System to eligible Third-Party Tenants, which must be approved in writing in advance by the CITY OF CLEARWATER, such approval not to be unreasonably withheld. The CITY OF CLEARWATER shall be allowed to occupy space at no fee charged to the CITY OF CLEARWATER and upon notice to M/A-COM and M/A-COM's approval of available space. Such approval shall not be unreasonably withheld.

8.2 THIRD-PARTY LEASE NEGOTIATIONS AND REPORTING

M/A-COM shall have the sole right to negotiate all future leases for all Third-Party Tower Tenants, which must be approved in writing in advance by the CITY OF CLEARWATER, such approval not to be unreasonably withheld. On a quarterly basis, M/A-COM will supply CITY OF CLEARWATER with a summary of all current leases by Third-Party Tower and Tenants. The summary will be in electronic format and will include the Lessee's name, lease expiration date, lease amount, etc. As requested by CITY OF CLEARWATER, M/A-COM will provide copies of individual leases.

8.3 THIRD PARTY TOWER TENANTS REVENUE

The gross revenue generated from existing (as of the contract date) Third Party Tower and Tenants shall not be divided between the parties; instead the City shall receive 100% and M/A-COM shall receive 0%. In addition, the agreement between M/A-COM and the CITY OF CLEARWATER concerning the State of Florida radio system shall be terminated upon entering into this agreement. The gross revenue generated from tower lease payments from new, future Third Party Tower Tenants shall be divided between the parties, with M/A-COM receiving 75% and CITY OF CLEARWATER receiving 25%.

8.4 PAYMENT TERMS

M/A-COM shall pay cash or provide credit in goods and services to CITY OF CLEARWATER, at the City's discretion, for its proportionate share of the revenues on a quarterly basis, within thirty (30) days of the end of each quarter and shall provide with each payment, a summary setting forth the name of each Third-Party Tenant, the revenues received during the quarter and the portion of the revenues paid to CITY OF CLEARWATER for the quarter as provided in VI, 6.2 of this Service Agreement.

8.5 SURVIVAL OF REVENUE SHARING

As appropriate, the provisions of Article 8 and associated provisions of Articles 3 and 10 may survive termination of this Service Agreement if this agreement is extended.

IX. DISPUTE RESOLUTION AND END OF TERM OPTION

9.1 RESOLUTION OF DISPUTES

Should any disputes arise with respect to this Service Agreement, M/A-COM and CITY OF CLEARWATER agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

Continuing Responsibilities: The Parties agree that, existence of the dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Service Agreement that are not affected by the dispute. Should either Party fail to continue to perform its responsibilities under this Service Agreement in the accomplishment of all non-disputed work, any additional costs incurred as a result of such failure to proceed shall be borne by that Party.

9.2 END OF TERM OPTIONS

Following the end of the Initial Term, or any Extended Term, CITY OF CLEARWATER shall have the right to:

- A. Extend the Term of this Service Agreement pursuant to Section 2.2 hereof upon additional, mutually agreeable terms and conditions, if any; or
- B. Not renew the Term of this Service Agreement, in which event neither Party shall have any further obligation to the other Party except that the CITY OF CLEARWATER shall extend services to Third Party Tower Tenants.

X. DEFAULTS AND REMEDIES

10.1 CITY OF CLEARWATER EVENTS OF DEFAULT

CITY OF CLEARWATER shall be in default hereunder if any of the following events ("CITY OF CLEARWATER Event of Default") shall occur:

- A. CITY OF CLEARWATER fails to pay any of its obligations under this Service Agreement when such obligation is due pursuant to the Prompt Payment Act, § 218.70, et. seq., Florida; or
- B. CITY OF CLEARWATER initiates a proceeding in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of a trustee, receiver, custodian, or the like for all or substantially all of its assets, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of 60 consecutive days; or an order for relief shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.
- C. CITY OF CLEARWATER fails to observe any material term, covenant or condition contained herein and such failure shall remain unremedied for a period of 30 days after written notice is provided by M/A-COM. However, if default is of such a nature that it could not reasonably be performed within 30 days, such 30-day period shall be extended so long as CITY OF CLEARWATER takes corrective action within such 30 days and thereafter diligently and continuously works to cure the default. The provisions of 9.1 will be in effect and supercede this paragraph C.

10.2 M/A-COM EVENTS OF DEFAULT

M/A-COM shall be in default hereunder if any of the following events ("M/A-COM Event of Default") shall occur:

- A. M/A-COM fails to pay any of its obligations under this Service Agreement when such obligation is due and such failure shall remain unremedied for a period of 30 days after written notice is provided by CITY OF CLEARWATER; or
- B. M/A-COM initiates a proceeding in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of a trustee, receiver, custodian, or the like for all or substantially all of its assets, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of 60 consecutive days; or an order for relief shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

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- C. M/A-COM fails to observe any material term, covenant or condition contained herein and such failure shall remain unremedied for a period of 30 days after written notice is provided by CITY OF CLEARWATER. However, if default is of such a nature that it could not reasonably be performed within 30 days, such 30-day period shall be extended so long as M/A-COM takes corrective action within such 30 days and thereafter diligently and continuously works to cure the default. The provisions of 9.1 will be in effect and supercede this paragraph C.

10.3 REMEDIES

Upon the occurrence of an Event of Default, the non-defaulting Party may either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted and contained in this Service Agreement, and may enforce and compel the performance of all duties and obligations required by this Service Agreement to be performed by the defaulting Party.

10.4 WAIVER OF DEFAULT

No delay or omission of by either Party to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 10.3 may be exercised from time to time, and as often as may be deemed expedient.

XI. OTHER PROVISIONS

11.1 SOFTWARE LICENSE

M/A-COM grants to CITY OF CLEARWATER a non-transferable, nonexclusive, license to use the software necessary to operate the Communications System. CITY OF CLEARWATER agrees not to provide or otherwise make available any licensed program or portion thereof to any third party and to hold such materials in confidence using a strict degree of care to protect the licensed program from unauthorized disclosure.

CITY OF CLEARWATER may make copies of each licensed program provided in machine-readable form as necessary for use and for archival purposes. CITY OF CLEARWATER may make copies of any written materials, such as manuals, diagrams or other documentation, for its own internal use.

11.2 FORCE MAJEURE

M/A-COM shall not be liable for delays in delivery or failure to perform due directly or indirectly to: (1) causes beyond M/A-COM's reasonable control, (2) Acts of God, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics, (3) M/A-COM's inability to timely obtain necessary materials, items, components or services from suppliers who are affected by the foregoing circumstances, or (4) the failure of CITY OF CLEARWATER to perform its obligations hereunder in a timely manner.

The foregoing shall apply even though any of such causes exists at the time of signing of the Service Agreement by M/A-COM or occurs after delays in M/A-COM's performance of its obligations due to other reasons.

In the event of any delay or failure excused by this Section M/A-COM shall as soon as practical notify CITY OF CLEARWATER and shall at the same time, or at the earliest practical date after such notice, specify the revised delivery and performance dates. In the event of such delay, the time of performance shall be extended for a reasonable time period to compensate for the time lost by CITY OF CLEARWATER by reason of delay.

11.3 INSURANCE AND RISK OF LOSS

A. HOLD HARMLESS

M/A-COM agrees to hold the City, its elected officials, employees, and agents harmless against all fines, penalties, and claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom, arising out of this Agreement unless such claims are a result of the City's negligence.

This provision shall survive the termination of this Agreement.

B. PAYMENT ON BEHALF OF CITY

M/A-COM agrees to pay on behalf of the City, and to pay the cost of the City's legal defense, as may be selected by the City, for all claims described in the Hold Harmless paragraph. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

C. LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by M/A-COM for the protection of all persons, including employees, and property. M/A-COM shall be expected to comply with all laws, regulations or ordinances related to safety and health and shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped if conditions exist that present immediate danger to persons or property. M/A-COM acknowledges that such stoppage will not shift responsibility for any damages from M/A-COM to the City.

D. BASIC COVERAGES REQUIRED

M/A-COM shall procure and maintain the following described insurance, except for coverage specifically waived by the City, on policies and with insurers acceptable to the City.

These insurance requirements shall not limit the liability of M/A-COM. The City does not represent these types or amounts of insurance to be sufficient or adequate to protect M/A-COM's interests or liabilities, but are merely minimums.

Such coverages shall protect M/A-COM from claims for damages for personal injury, including accidental death, as well as any party directly or indirectly employed by M/A-COM.

Except for workers compensation and professional liability, M/A-COM's insurance policies shall be endorsed to name the City as an additional insured to the extent of the City's interests arising from this Agreement.

Except for workers compensation, M/A-COM waives its right of recovery against the City, to the extent permitted by its insurance policies.

M/A-COM's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. M/A-COM is responsible for the amount of any deductible or self-insured retention.

CITY OF CLEARWATER, FLORIDA

Insurance required of M/A-COM or any other insurance of M/A-COM shall be considered primary but only to the extent of the negligence of M/A-COM in the delivery of services under this contract, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of City, Insurance, Certificates of Insurance and any Additional Insurance provisions of this Agreement. Where no specific limit of coverage is mentioned in this Agreement, the minimum limit of insurance coverage required by the City shall be \$1,000,000.

E. Workers Compensation Coverage

M/A-COM shall purchase and maintain statutory workers compensation insurance for all workers compensation obligations imposed by state law and employers liability limits of at least \$100,000 each accident and \$100,000 each employee/\$500,000 policy limit for disease.

M/A-COM shall also purchase any other coverage required by law for the benefit of employees.

F. General, Automobile, And Excess Or Umbrella Liability Coverage

M/A-COM shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies of the Insurance Services Office.

Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies and the total amount of coverage required.

G. Commercial General Liability Coverage. Occurrence Form Required

Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this Agreement, broad form property damage, and property damage resulting from explosion, collapse or underground (x, c, u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

M/A-COM is required to continue to purchase products and completed operations coverage, at least to satisfy this Agreement, for a minimum of three years beyond the City's acceptance of any renovation or construction projects.

Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies and the total amount of coverage required.

H. Business Auto Liability Coverage

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

I. Excess Or Umbrella Liability Coverage

Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverage. Excess or Umbrella Liability insurance shall include bodily injury and property damage coverage.

M/A-COM shall purchase and maintain Excess or Umbrella Liability coverage over and above its other liability coverage in the amount of \$2,000,000.

J. Property Coverage for Tower

M/A-COM has the option but not the obligation to purchase and maintain for the life of the Agreement, all risk/special perils (including sinkhole) property insurance (or its equivalent) to cover loss resulting from damage to or destruction of the tower, and its improvements, and any attached personal property or contents. The policy shall cover 100% replacement cost, and shall include an agreed value endorsement to waive coinsurance. The City shall be named as an additional insured.

K. Professional Liability/Malpractice/Errors or Omissions Insurance

If coverage is available in the insurance market, M/A-COM shall purchase and maintain professional liability or malpractice or errors or omissions insurance commensurate with the type of professional services, if any, to be rendered to the City with minimum limits of \$1,000,000 per occurrence.

If claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage

and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

L. EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance that provide that the City shall be notified at least 30 days in advance of cancellation, non-renewal or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, M/A-COM shall furnish complete copies of M/A-COM's insurance policies, forms and endorsements.

For Commercial General Liability coverage M/A-COM shall, at the option of the City, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of M/A-COM's obligation to fulfill the insurance requirements herein.

11.4 AMENDMENT AND WAIVER

No supplement, modification, amendment or waiver of this Service Agreement shall be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Service Agreement shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

11.5 FURTHER ASSURANCES

The Parties shall with reasonable diligence, do all things and provide all reasonable assurances as may be required to complete the transactions contemplated by this Service Agreement, and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Service Agreement and to carry out its provisions.

11.6 SEVERABILITY

Any provision in this Service Agreement which is held to be illegal or unenforceable in any jurisdiction shall be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions and any such illegal or unenforceable provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law.

11.7 ENTIRE AGREEMENT

This Service Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth in this Service Agreement.

11.8 GOVERNING LAW

This Service Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

11.9 PUBLIC REGULATION AND FREQUENCY LICENSES

This Service Agreement is subject to all of the terms and conditions associated with all of CITY OF CLEARWATER outstanding FCC Licenses, applications and authorizations from the FCC and other federal, state and local government agencies with respect to the Communications System.

CITY OF CLEARWATER shall retain control over its licensed frequencies at all times as required by Section 310(d) of the Communications Act, as amended, and by FCC rules and policies, and shall carry out all policy decisions, including approving the filing of FCC applications, with respect thereto. Nothing in this Service Agreement shall give M/A-COM, directly or indirectly, the right to control or direct CITY OF CLEARWATER exercise of ultimate authority over its FCC licenses. In providing these services, M/A-COM shall take no action that would cause any of the FCC Licenses to be revoked, or that would result in a transfer of control or assignment of the FCC Licenses without necessary FCC approval. M/A-COM shall cooperate with CITY OF CLEARWATER in providing all information necessary to ensure that all FCC Licenses remain valid and in full force and effect.

This Service Agreement is not intended to convey any FCC license, channel or frequency possessed by CITY OF CLEARWATER. M/A-COM's rights with respect to all such licenses, channels and frequencies shall at all times be strictly limited to the management of any such licenses, channels and frequencies.

11.10 LIMITATIONS OF LIABILITY

- A. The entire liability of M/A-COM, its directors, officers, employees and agents and customer's exclusive remedy with respect to any claim concerning M/A-COM's performance or non-performance of the terms of this Service Agreement or any claim for breach or default or for any other claim arising under or related in any way to this Agreement shall be the recovery of CITY OF CLEARWATER actual direct damages but which shall in no event exceed the greater of (x), the amount of any applicable insurance required by this Service Agreement, or (y), the amount

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of the Quarterly Payments made by the CITY OF CLEARWATER to M/A-COM over the 36 months immediately preceding the event giving rise to such claim.

- B. In no event shall M/A-COM be liable for any loss of profits, revenues, customers or contracts, loss of use of equipment, loss of data, business interruption, failure to realize expected cost savings or for any indirect, consequential, incidental, special, punitive or exemplary damages howsoever caused or arising, incurred by CITY OF CLEARWATER even if M/A-COM had been advised of the possibility of same or even if same were reasonably foreseeable.
- C. The provisions of this Section 11.10 shall apply whether the claim sounds in contract, warranty, tort (including negligence and strict liability) or any other statutory, legal or equitable grounds.

11.11 ASSIGNMENT

Each Party may assign its respective rights and obligations under this Service Agreement with the express written consent of the other, which consent shall not be unreasonably withheld.

Notwithstanding anything to the contrary contained herein, CITY OF CLEARWATER acknowledges and agrees that M/A-COM shall have the right, at any time and without the consent of CITY OF CLEARWATER, to sell, transfer or assign all or any portion of its rights to the payments described herein to any Affiliate of M/A-COM. M/A-COM and its permitted assignees shall furthermore have the right, at any time and without the consent of CITY OF CLEARWATER, to collaterally assign all or any portion of its rights to such payments or to other rights to enforce such payments provided herein to any financing party or lender or trustee in regard to Secured Debt.

However any such assignment of payments shall not relieve M/A-COM or M/A-COM'S Surety of their respective responsibilities, obligations, and liabilities under this Agreement.

11.12 NO THIRD PARTY BENEFICIARIES

The Parties acknowledge and agree that this Service Agreement is for the benefit of the Parties hereto and any permitted assignee under Section 11.11. The Service Agreement is not intended to confer any legal rights or benefits on any third party. There are no third party beneficiaries to this Service Agreement or any part or specific provision thereof.

11.13 COUNTERPARTS

This Service Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties.

IN WITNESS WHEREOF, the Parties have executed and acknowledged this Service Agreement, the day and year first above written.

ATTEST:

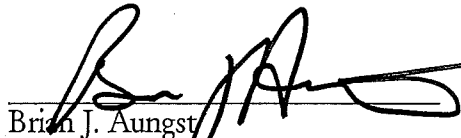
M/A-COM PRIVATE
RADIO SYSTEMS, INC.

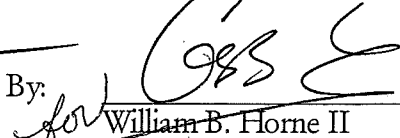

Assistant Corporate Secretary

By: 
Title: VP and General Counsel

Countersigned:

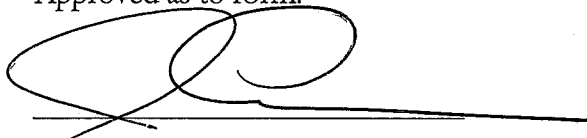
CITY OF CLEARWATER, FLORIDA

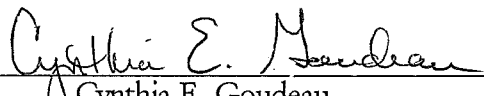

Brian J. Aungst
Mayor-Commissioner

By: 
William B. Horne II
City Manager

Approved as to form:

Attest:


Assistant City Attorney


Cynthia E. Goudeau
City Clerk

SECOND AMENDMENT TO SERVICE AND ACCESS AGREEMENT

THIS SECOND AMENDMENT (this "Amendment") to SERVICE AND ACCESS AGREEMENT dated July 1, 2002, as amended by the First Amendment dated November 8, 2005 (collectively, the "Agreement") is entered into as of the 14th day of Sept., 2015 ("Effective Date") by and between **HARRIS CORPORATION**, a Delaware corporation, successor-in-interest to M/A-COM, Inc. under the Agreement (as defined below) ("Harris"), and **The City of Clearwater, Florida** (the "City").

RECITALS

WHEREAS, the parties entered into the Agreement for the installation of a Communications System and related services thereto, as further described in the Agreement.

WHEREAS, Harris' predecessor-in-interest and Sprintcom, Inc. ("Sprint") , are parties to that certain Communications Site Sublicense Agreement (Tower) dated July 17, 2007 (the "Original Sublicense Agreement" pursuant to which Sublicensor sublicensed to Sublicensee space on a telecommunications tower and approximately three hundred seventy-five (375) square feet of space located in the City of Clearwater, Florida, commonly known as 1417 S. Missouri Avenue, as more particularly described therein for use in connection with providing communications services;

WHEREAS, Harris desires to provide Sprint with a limited and conditional right under the Sublicense Agreement to engage directly with the City for rental of tower space on conditions set forth in the Sublicense Agreement;

WHEREAS, the City and Sprint cannot engage directly for rental of tower space under the conditions to be detailed in the Sublicense Agreement, unless the SERVICE AND ACCESS AGREEMENT is amended as follows; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows as of the Effective Date, unless otherwise indicated:

1. Amendment.

Section 8.2. Shall be amended to add the following underlined language to the first sentence of this section: "M/A-COM, or its successors in interest, shall have the sole right to negotiate all future leases for all Third-Party Tower Tenants, which must be approved in writing by the CITY OF CLEARWATER, such approval not be unreasonably withheld; however, the City shall have the right to directly negotiate a license or lease with Third-Party Tower Tenants only after M/A-COM has terminated its sublicense agreement or portions of the sublicense agreement effecting M/A-COM's rights under the Agreement, provided the City is not in default under its obligations to M/A-COM under the Agreement.

2. Miscellaneous.

a. The terms and conditions of the Agreement, except as amended herein, shall remain in full force and effect.

b. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages delivered by electronic mail or facsimile shall be deemed effective as original signature pages.

c. Each of the parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this First Amendment to Communications Site Sublicense Agreement (Tower) as of the day and year first above written.

HARRIS:

HARRIS CORPORATION, a Delaware corporation

By: [Signature]
Name: ANIL K JHA
Title: Vice President - Global Solutions

Approved as to Form
By: [Signature]
Date: 5/2/15

Witnesses:
Patricia K. Harpring
PATRICIA K. HARPRING
Print Name:

[Signature]
Print Name: Barbara Klenbach

**COUNTERSIGNED AS TO
THE CITY OF CLEARWATER, FLORIDA:**

-george cretekos
George N. Cretekos
Mayor

By: William B. Horne II
William B. Horne II
City Manager

Approved as to form:
[Signature]
Camilo A. Soto
Assistant City Attorney

Attest:
Rosemarie Call
Rosemarie Call
City Clerk

