

CONSULTANT CONTRACT AMENDMENT

This amendment is to the Contract between Bureau of Information and Telecommunications and EF Johnson Company, 1440 Corporate Drive, Irving, Texas, 75038. The amendments to the contract are in sections 4.1. All other sections of the original contract shall remain in effect, are binding on all parties, and are unchanged.

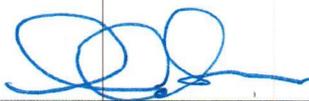
4. TERM:

4.1 This Contract shall be for an initial term ending September 30, 2015 ("Initial Term"), and may be renewed by mutual parties for two (2) additional twelve month terms ("Renewal Term"). This contract is amended to end on September 30, 2017.

In witness hereto the parties signify their agreement by signature affixed below:



David Zolnowsky, Commissioner (Date)
Bureau of Information and Telecommunications

 Sep 21, 2016

Consultant (Date)

CONTRACT FOR TWO-WAY RADIO EQUIPMENT AND ACCESSORIES

This Contract is made as of this 13th, day of February, 2014 by and between the State of South Dakota ("State") and E.F. Johnson Company ("E.F. Johnson" or "Contractor"). State and E.F. Johnson are sometimes referred to herein individually as a "Party" and collectively as "Parties".

The State and E.F. Johnson agree and covenant between themselves to the following terms and conditions:

1. DEFINITIONS

In this Contract, the following words have the meanings indicated:

- 1.2. "**Contract**" means this Contract for Two-Way Radio Equipment and Accessories.
- 1.3. "**Contractor**" means E.F. Johnson Company, whose principal business address is 1440 Corporate Drive, Irving, Texas 75038-2401.
- 1.4. "**Purchase Order**" authorizes Contractor to proceed with delivery of products and/or services.
- 1.5. "**State**" means the State of South Dakota through the Bureau of Information and Telecommunications.

2. SCOPE OF WORK

The Contractor shall provide Two-Way Radio Equipment and Accessories ("Products") for the State as listed in Exhibit A. These Products shall be provided in accordance with the terms and conditions of this Contract, and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A-C, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A – Product and Pricing Information
Exhibit B – E.F. Johnson Warranty Statement
Exhibit C – E.F. Johnson Software License Agreement

3. PURCHASES AND PAYMENT

- 3.1. **State Purchases.** State may purchase Products by submitting a written Purchase Order detailing the following: Product(s) requested (including model number), description, quantity requested of each Product(s), date of order, bill-to and ship-to address(es), purchasing agent's signature and contact information, and the delivery date(s) ("Purchase Order"). Contractor may reject State's Purchase

Order at Contractor's full discretion within five (5) business days of submission of the Purchase Order; however Contractor shall endeavor to accept all reasonable Purchase Orders. Contractor's acceptance of State's Purchase Order shall be confirmed to State in writing ("Sales Order Confirmation").

- 3.2. Payment Terms.** Payment terms are governed by SDCL ch. 5-26 and are net forty five (45) from invoice date. If payment is not received within forty five (45) days, State shall pay interest at the rate of one and one-half percent (1½%) per month on the unpaid portion of any payment not paid when due until payment is received by Contractor as set forth in SDCL ch. 5-26.

4. TERM

- 4.1. Term.** This Contract shall be for an initial term ending September 30, 2015 ("Initial Term"), and may be renewed by mutual agreement of the parties for two (2) additional twelve month terms ("Renewal Term"). It is the intention of the Parties that pricing shall remain firm during the any applicable Initial Term or Renewal Term. Notwithstanding the number of renewals, if any, this Agreement is and always shall be interpreted as a fixed and not indefinite term Agreement. Expiration or termination of this Agreement will not affect any warranty period that has not yet expired or the survival of Contractor's obligations under Sections 12 and 13 of this Agreement.

- 4.2. Price Escalation.** The Contractor may request a price adjustment in writing ninety (90) days prior to any Renewal Term. Proposed pricing may be based on an adjustment in the Consumer Price Index ("CPI") measured at the time of the request. If State and Contractor do not reach agreement in writing on renewal pricing prior to the expiration of the current term, the Contract will be terminated by either Party with no penalty to the other Party.

5. DEFAULT AND TERMINATION

If a Party fails to perform a material obligation under this Contract, unless based on a Force Majeure pursuant to Section 6, the other Party may consider that Party to be in default. The non-defaulting Party shall give the defaulting party written notice of such default, and specify in writing a reasonable amount of time that is in no event less than thirty (30) days during which the defaulting Party has to cure such default or provide a cure plan. The amount of time to cure specified shall take into consideration the gravity and nature of the default.

If a defaulting Party fails to cure the default in the paragraph above, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of the contract. In the event of such termination, the defaulting Party will promptly return to the non-defaulting Party any of its confidential information. If State is the non-defaulting Party, and terminates this contract as permitted by this Paragraph and completes the work through a third party, State may, as its exclusive remedy recover from Contractor reasonable

costs incurred to complete the work to a capability not exceeding that specified in the portion of the contract that serves as the basis for the default, less the unpaid portion of that work. State agrees to use reasonable efforts to mitigate such costs and to provide Contractor with invoices substantiating the charges.

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State; however, Contractor shall be entitled to payment for all products and services ordered by the State prior to the effective date of such termination.

6. FORCE MAJEURE

In the event of either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, it is agreed that upon such Party giving notice and full particulars of such Force Majeure in writing to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, and any corresponding obligations of the other Party, shall be suspended during the continuance of any inability caused by such Force Majeure, but for no longer period, and such Force Majeure shall as far as possible be remedied with all reasonable and diligent dispatch by the Party claiming Force Majeure in order to put itself in a position to carry out its obligations under this Agreement. The term "Force Majeure" shall mean any event or circumstance beyond the reasonable control of the Party claiming Force Majeure, and which by exercise of due foresight such Party could not reasonably have been expected to avoid and which the Party is unable to overcome by the exercise of due diligence, including but not necessarily limited to, any act of God, any act or omission of any government authority not caused by the act or omission of the Party claiming Force Majeure, explosions, fire, riot, war and natural disasters; provided, however, the term "Force Majeure" shall include strikes or labor disputes which commence during the applicable period for service rendered hereunder.

7. SHIPPING, RISK OF LOSS AND TITLE TRANSFER

Contractor will ship all products FOB destination. All freight charges will be prepaid by Contractor and added to the invoices. Title to the products shall pass to State upon delivery, except that title to software will not pass to State at any time. Risk of loss will transfer from Contractor to State upon delivery of the products to the State.

Partial shipment and partial performance are hereby authorized by the State. Contractor shall issue invoices to State for all Products as they are shipped or performed.

8. WARRANTY

Products sold hereunder carry Contractor's standard product warranty attached hereto as Exhibit B. CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OR TRADE, OR ANY OTHER MATTER.

9. DISCONTINUANCE OF PRODUCTS

Contractor reserves the right at any time to discontinue any model in its product line and to make changes or improvements in specifications or design in such products without incurring any obligations to State with respect to the past or future sale of such products.

10. LIMITATION OF LIABILITY

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, NEITHER PARTY (nor any of ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES) WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY VENDOR PURSUANT TO THIS AGREEMENT.

IN NO EVENT SHALL CONTRACTOR HAVE ANY LIABILITY TO THE STATE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE FOR ANY DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOSS OF USE, BUSINESS INTERRUPTION, LOST OR DAMAGED FILES OR DATA, OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS TRANSACTION EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S LIABILITY FOR DAMAGES, FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL BE LIMITED TO THE ACTUAL DAMAGES PROVEN, IN NO EVENT TO EXCEED TEN TIMES THE PURCHASE PRICE OF THE PRODUCTS FORMING THE BASIS OF THE CLAIM.

THE PROVISIONS OF THIS SECTION DO NOT APPLY TO CONTRACTOR'S OBLIGATIONS UNDER SECTIONS 12 AND 13 OF THIS AGREEMENT.

11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

11.1. Confidentiality

Confidential Information and any rights therein shall be and remain the property of the Disclosing Party.

E.F. Johnson and State, for itself and on behalf of its officers, employees and agents, agree: (i) to hold Confidential Information of the other Party in strict confidence and not to disclose any part of it to others, exercising at least the same degree of care as it takes in protecting its own trade secrets (but no less than a reasonable degree of care); (ii) not to disclose Confidential Information of the other Party without the other Party's prior written consent to any entity or person other than its employees or contractors who require disclosure to perform under the terms of this Agreement (the "Purpose"); (iii) not to allow any persons or entities other than such employees access to Confidential Information of the other Party, and then only upon execution by the employee of the confidentiality agreement; and, (iv) except as needed to perform the Purpose, not to make any use of Confidential Information of the other Party unless authorized, in writing, in advance by the other Party.

Neither Party shall attempt to gain unauthorized access to any Confidential Information of the other Party and in the event access is obtained, it shall immediately report that fact to the other Party and to the extent possible explain the details of the procedure used to gain such access.

The obligations of this section shall continue with respect to any Confidential Information during the term of this Agreement and for a period of three (3) years following termination of this Agreement.

Within thirty (30) calendar days after termination of this Agreement or upon written request by the Disclosing Party, whichever is earliest, the Receiving Party shall return to the Disclosing Party all Confidential Information of the Disclosing Party that is not needed by the Receiving Party to perform its obligations hereunder (including, but not limited to, that generated by or on behalf of Receiving Party which is in the possession of the Receiving Party or its employees or subcontractors and is in tangible form) and all copies thereof, or with the Disclosing Party's prior written approval the Receiving Party shall destroy the same and certify in writing, such destruction to the Disclosing Party.

The Receiving Party shall require protective covenants and agreements from third parties to whom Confidential Information of the other Party is disclosed. The Receiving Party shall inform its employees assigned to the services with respect to this Agreement and/or any of its obligations contained in this section, and shall require such employees to sign agreements of confidentiality containing

nondisclosure/nonuse obligations prior to giving them access to Confidential Information of the other Party.

If the Receiving Party is required by law, regulation, or judicial order to disclose Confidential Information of the Disclosing Party, the Receiving Party, except to the extent prohibited by law, shall promptly notify the Disclosing Party and cooperate with Disclosing Party if requested to minimize such disclosure and to otherwise protect the confidentiality of such Confidential Information as is required to be disclosed to the maximum extent possible under the relevant circumstances.

State and Contractor acknowledge and agree that the Confidential Information and intellectual property may contain valuable trade secrets of each other, the disclosure of which would cause the other Party irreparable harm for which monetary compensation would be inadequate. Therefore, the Parties agree that in the event of a breach by the other Party of its nondisclosure obligations under this Agreement it shall be entitled to injunctive relief from a court of competent jurisdiction without the need to post any bond or demonstrate actual damages.

Contractor finally acknowledges that the State's ability to comply with these confidentiality provisions is subject to South Dakota's open records provisions, SDCL ch. 1-27 and that the State's good faith compliance with these provisions does not constitute a breach of this agreement and will result in liability on behalf of the State. The State finally acknowledges that it will adhere to SDCL ch. 1-27-1.5 (3) Trade secrets. Information and documents provided in this contract or in conjunction with this contract are considered other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose, subject to all other provisions of applicable law.

11.2. Intellectual Property.

All intellectual property, including but not limited to, patent, trademark, copyright, mask work, design, trade dress, trade secrets, design drawings, sketches, models, samples, software, tooling, processes, methods and ideas, and all technical data relating to the products is and shall remain Contractor's intellectual property ("Contractor IP"). In addition to Contractor's other remedies, State agrees that any benefit or property derived from any unauthorized use of Contractor IP shall be the exclusive property of Contractor. Sale of Products to State does not convey a license to Contractor IP other than a right to use the Product in accordance with product specifications.

12. Patent and Copyright Infringement.

Contractor warrants that it has good title to the Software or the right to license the same hereunder purchased by the State under this Agreement and the Software

does not infringe upon any valid U.S. patent issued prior to the date of the Agreement. Contractor will defend, at its expense, any action brought against State to the extent it is based on a claim that the Software, used within the scope of this license, infringes upon any such U.S. patent, but only if (a) State promptly notifies Contractor in writing of any such claim or proceeding, (b) State permits Contractor to fully control the defense of such action, (c) State cooperates with Contractor in connection with such defense, (d) State does not compromise or settle any claim without the prior written consent of Contractor and (e) the infringement does not relate to any (i) modifications to the Software made other than by Contractor, or (ii) modifications made to State's specifications. Contractor shall have no other or further obligation or liability with respect to any claim of infringement or for breach of its warranty of title. If any part of the Software becomes, or if Contractor considers any of the Software likely to become, subject to a claim of infringement, Contractor may in its sole discretion (a) procure for State the right to continue using such Software, (b) replace or modify the Software to make it non-infringing, refund the paid purchase price of the Equipment upon return of the Equipment upon return of the Equipment in undamaged condition, or (c) take such other action as is necessary and feasible to maintain State's use of the Software.

In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages, costs and expenses, including reasonable attorney fees finally awarded against State by a court of competent jurisdiction for an infringement claim or agreed to, in writing, by Contractor in settlement of an infringement claim. Finally, Contractor will indemnify State for all reasonable costs and expenses incurred as the result of an Infringement Claim covered by this section.

13 Indemnification

Contractor will indemnify and hold State harmless from any and all liability, cost and expense, reasonable attorney fees, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against State to the extent it is caused by the willful misconduct or negligence of Contractor, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if State gives Contractor prompt, written notice of any the claim or suit. State will cooperate with Contractor in its defense or settlement of the claim or suit. This section sets forth the full extent of Contractor's general indemnification of State from liabilities that are in any way related to Contractor's performance under this Agreement.

14 DISPUTES

If a claim, dispute, or other matter in question arises out of this Contract, which the Parties are unable to resolve through mutual, good faith, negotiations, it shall first be mediated by a mutually selected mediator through non-binding mediation.

The Parties will not unreasonably withhold their consent to the selection of a mediator and will share in the cost of the mediation equally; may postpone mediation until they have completed some specific but limited discovery about the dispute. If such claim, dispute or other matter cannot be resolved by non-binding mediation within sixty (60) days of submittal to the mediator, each Party shall be free to pursue such legal remedies as the Party believes it is entitled to under the terms of this Contract. Each Party may resort to judicial proceedings described in this section before the expiration of the sixty (60) day mediation period if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party.

15. MISCELLANEOUS PROVISIONS

- 15.1. Export Administration.** The Parties undertake to comply with all applicable export/re-export laws and regulations regarding the Products or Confidential Information. Specifically in the previous regard, the Receiving Party shall adhere to the U.S. Exports Administration Laws and Regulations and shall not export or re-export any Confidential Information or technical data or products received from the other Party or the direct product of such Confidential Information or technical data to any country or party unless properly authorized by the U.S. Government. The Parties agree that these obligations shall survive the termination of this Contract.
- 15.2. Independent Contractor.** E.F. Johnson's relationship with State under this Agreement is that of an independent contractor. Nothing in this Agreement, any Exhibit to this Agreement, or any Order Confirmation shall be construed as being inconsistent with that status. E.F. Johnson shall be solely responsible for its employees, sub suppliers and agents and for their benefits, contributions and taxes, as applicable.
- 15.3. Assignment.** This Contract, including all Exhibits, are not assignable by either Party, in whole or in part, without the prior written consent of the other (which consent shall not be unreasonably withheld), and any attempted assignment without such consent, whether by operation of law or otherwise, shall be void; provided however and notwithstanding anything herein to the contrary, either Party may assign this Contract, in whole or in part, without the other Party's consent, to any Affiliate or any purchaser of a substantial portion of that Party's Affiliate, business or facility(s) as to which this Contract relates. Subject to the foregoing, this Contract and Exhibits shall bind and inure to the benefit of the successors and assigns of the respective Parties hereto, including without limitation, any purchaser of a substantial portion of State's or Contractor's respective Affiliate, business or facility as to which this Contract and Exhibits relate. Notwithstanding any provision to the contrary in this Contract, including all Exhibits, any assignment of this Contract or part thereof shall not relieve the

assignor Party from any obligation to pay amounts owing to the non-assigning Party.

- 15.4. Waiver.** The failure of either Party to enforce at any time any of the provisions of this Contract or an Exhibit shall in no way constitute or be construed as a waiver of that or any other provision of this Contract or an Exhibit, nor in any way to affect the validity of this Contract or an Exhibit or any provision thereof or the right of such Party to enforce thereafter each and every provision of this Contract. No waiver of any provision or breach of this Contract shall be deemed to be a waiver of any other provision or breach. The remedies herein reserved by the Parties shall be cumulative and additional to any other or further remedies provided in law or equity which the Parties may possess.
- 15.5. Governing Law and Venue.** This Contract, and its Exhibits are made under and shall be governed by the local laws of the State of South Dakota, U.S.A. (without giving effect to the conflict of law principles thereof). Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in over any claim or matter arising under or in connection with this Agreement.
- 15.6. Reformation.** In the event any provision of this Contract or an Exhibit is determined to be invalid, illegal or otherwise unenforceable for any reason, that provision shall be reformed to the maximum extent permitted to preserve the Parties' original intent, failing which it shall be severed from this Contract or the applicable Exhibit, with the balance of this Contract and of the applicable Exhibit or Purchase Order continuing in full force and effect.
- 15.7. Reproductions.** This Contract, Exhibits, Purchase Orders and all documents relating hereto and thereto may be stored and/or reproduced by any means or process including electronic or mechanical means. If a Party signs this Contract, an Exhibit, and/or any Purchase Order (whether in writing, by a computer generated signature, or by a signature created, transmitted, received, or stored by electronic means) and then transmits an electronic facsimile of the signature page, (including, without limitation, in PDF format), the receiving Party may rely upon such electronic facsimile as an originally executed signature page without any modification or change to this Contract, unless such modification or change is noted on such electronic facsimile by the transmitting Party.
- 15.8. Counterparts.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Contract, including the signature pages hereto, shall be deemed to be an original.
- 15.9 Entire Agreement.** This Contract and Exhibits contain the entire agreement of the Parties with regard to the subject matter hereof and thereof and supersedes any

prior communications, commitments, representations or warranty, or contracts between the Parties relating to the subject matter hereof and thereof. No modifications of this Contract shall be of any force or effect unless reduced to a writing which specifically references this Agreement, states an express intent to modify or amend this Agreement, and is signed by the Parties claimed to be bound thereby.

15.11 Insurance. Contractor maintains and will maintain during the term of this Agreement the following: General and Products Liability in the general aggregate amount of \$2,000,000 (combined single limit for bodily injury and property damage); automobile liability in the amount of \$2,000,000 (aggregate and per occurrence, combined single limit); statutory workers' compensation; and employer liability in the amount of \$1,000,000. Upon written request from the State, Contractor will provide an industry standard certificate of insurance.

15.12. Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either delivered personally or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

State
Attn: Jeffrey Pierce
910 E Sioux
Pierre, SD 57501
fax: (605)773-3741

EF Johnson
Attn: VP, Sales
1440 Corporate Drive.
Irving, Texas 75038
fax: (972) 819-0639

with a copy of legal notices to:

Attn: General Counsel
1440 Corporate Drive
Irving, Texas 75038
fax: (972) 819-2314

15.13. Compliance With Applicable Laws. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement

15.14. Records and Auditing. Contractor agrees to maintain all records that are pertinent to this Agreement for a period of three years following termination and final payment. These records shall be subject at all reasonable times for inspection, review, or audit by personnel duly authorized by the state of South Dakota, and Federal officials so authorized by law.

15.15 Antitrust Assignment. The Contractor hereby agrees to convey, assign and transfer to the State of South Dakota all rights, title, and interest in and to all

causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL ch. 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the State of South Dakota in connection with this Agreement.

In witness whereof, we, the undersigned agree to the foregoing terms and conditions of this Contract.

E.F. Johnson Company ("E.F. Johnson")

State of South Dakota ("State")

By: [Signature]
Name (Print): Pim Green
Title: President & CEO
Date: 2/9/15

By: [Signature]
Name (Print): David Fahnovsky
Title: BIT Commissioner
Date: 02/12/2015

By: _____
Name (Print): _____
Title: _____
Date: _____