



Amendment No. 3
to
Contract No. NS160000056
for
Communications System Agreement
between
Motorola Solutions, Inc.
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to include additional Scope of Work per attached Exhibit A, Change Order Lifecycle Migration Phase 6.

2.0 The total Contract amount is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/04/2016 – 12/31/2020	\$35,000,000.00	\$35,000,000.00
Amendment No. 1: Contract extension	\$0.00	\$35,000,000.00
Amendment No. 2: Scope Modification	\$0.00	\$35,000,000.00
Amendment No. 3: Scope Modification	\$0.00	\$35,000,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



Printed Name: Richard R Russek
Authorized Representative
Motorola Solutions, Inc.
1303 E. Algonquin Rd.

Signature & Date:



Sai Purcell, Procurement Specialist IV
City of Austin Purchasing Office

Schaumburg, IL 60196

Signature & Date:

A handwritten signature in blue ink, appearing to be "J. Howard", is written over a horizontal line.

Jim Howard, Procurement Manager
City of Austin Purchasing Office

Change Order No. TX-12I172C - 006

Date: 10-9-18

Project Name: City of Austin Lifecycle Migration Phase 6

Customer Name: City of Austin, Texas

Customer Project Mgr: Robert Turner

The purpose of this Change Order is to: *(highlight the key reasons for this Change Order)*

Capture the scope changes made during the Design Review phase of the project.

Contract # Amendment No. 14Contract Date: 12/20/2012

In accordance with the terms and conditions of the contract identified above between
The City of Austin, Texas and Motorola Solutions, Inc., the following changes are approved:

Contract Price Adjustments

Original Contract Value:	\$32,000,000.00
Previous Change Order amounts for Change Order numbers <input type="text"/> through <input type="text"/>	\$0
This Change Order:	\$780,510
New Contract Value:	\$32,780,510.00

Completion Date Adjustments

Original Completion Date:	12-31-18
Current Completion Date prior to this Change Order:	12-31-18
New Completion Date:	12-31-20

Changes in Equipment: *(additions, deletions or modifications)* **Include attachments if needed**

See Attachment A

Changes in Services: *(additions, deletions or modifications)* **Include attachments if needed**

See Attachment A

Schedule Changes: *(describe change or N/A)*

Now that additional sites (#15-16), funded outside this contract will be tied in with the implementation of this project, cutover/implementation will move out on this project, to meet site development/tower construction timeline of the other project.

Pricing Changes: *(describe change or N/A)*

The scope changes for equipment and services, described in the Attachment A, will be funded in part by the "Technology Credit" that is available as part of this project and also an additional PO from Austin. This pricing breakdown can be found in Attachment B and summarized in Attachment C.

Customer Responsibilities: *(describe change or N/A)*

See Attachment A

Payment Schedule for this Change Order:
(describe new payment terms applicable to this change order)

Payment schedule will remain the same for Phase 6.

Unless amended above, all other terms and conditions of the Contract shall remain in full force. If there are any inconsistencies between the provisions of this Change Order and the provisions of the Contract, the provisions of this Change Order will prevail.



CHANGE ORDER

[TX-121172C - 006]

IN WITNESS WHEREOF the parties have executed this Change Order as of the last date signed below.

**Motorol
Solution**

By

Printed Name Richard R Russek

Title Area Sales Manager

Date 10/16/2018

Customer

By:

Printed Name:

Title:

Date:

Reviewed by:

Motorola Solutions Project Manager

Date:

10/16/18

ATTACHMENT A – Changes in Equipment and Services

A general description of the changes are noted below. However, more detail on specifics can be found in ATTACHMENT B where the pricing impacts of these changes are listed.

1. TTA Re-Use From CW Repairs Credit – (1) of the (2) tower top amplifiers (TTA) and associated equipment will no longer be ordered as part of this project – but will be used from existing equipment at 3 sites (Lime Creek, Sematech and Four Points).
2. Change to Smaller Prime Site DC and No Batteries at Martin Hill Credit – after refinement of DC load during the CDR, it was determined that a smaller size DC system would be satisfactory at Martin Hill. Also, due to battery End-of-Life situation, the batteries at Martin Hill were replaced outside the scope of this project, so are no longer needed to be provided with this project.
3. Console Licenses Credit – instead of ordering new console licenses for Marble Falls, Georgetown Utility and Round Rock, the Austin surplus licenses will be used.
4. Generator and Power Changes Cost – during CDR discussions, it was determined that the proposed 100KW Generac generators at 4 sites (Honeycomb, Collier, Singleton and Bell Springs) will be replaced with Cummins 80KW generators. Portable generator connections with manual switch will also now be provided at these 4 sites, through a product from TryStar.
5. HVAC Changes at Honeycomb and Collier Cost – during CDR discussions, it was determined that instead of 2 air conditions (HVAC), we would provide a design for 4. Also, at Collier, Motorola would remove a partial wall between the radio room and the existing generator room, so as to be able to use that soon to be vacant generator room space.
6. Existing Equipment Move in Racks No Cost – during CDR site walks, it was determined that there are some miscellaneous equipment that needs to be relocated and various sites, in order to support our cutover plan for the sites. Since Motorola feels this should have been captured during presale phase, we are covering this cost.
7. MX5 Connections for AVPN – additional interface modules are required for the MX5 Juniper routers to support an AVPN backhaul connection.
8. CW Last 12 Channels, Additional Removals Cost – during CDR discussions, it was determined that the customer wants us to remove fully the Countywide (CW) existing simulcast racks and antenna after cutover. Originally ½ of CW was going to remain on site.
9. Additional Antenna Removal Davis and Four Pts Cost – during CDR discussions, it was determined that Austin would like for us to remove additional existing antennas that are on Davis and Four Points – in an effort to clean up the tower structures. Some of this removal was included in the proposal, but we needed to refine the quantities.
10. Add T1 Capability to Bell Springs MW Spur No Charge – during CDR discussions, it was determined that T1 modules will be needed on the Barton Creek to Bell Springs, to support the cutover without unacceptable outages. Since this planning should have been considered presale, Motorola is covering this cost.

11. Additional Spare Cost – during CDR discussions, it was determined that the Qty 2 spares for all necessary components was not adequate. Additional spares will be provided.
12. Bell Springs & Singleton Change From ARS to Simulcast Cost – during CDR discussions, it was determined that the (2) 12 Channel Astor Repeater Sites at Bell Springs and Singleton Bend would be changed to 30 Channel Simulcast remote sites.
13. Tower Analysis for Barton, Singleton & Bell Springs Credit – during CDR discussions, it was determined that Austin wanted to perform these 3 tower analysis outside the project, so they were funded separately.
14. Lost Pines ARS Removed Credit – during the course of the years, since the proposal was first generated, the Lost Pines site had been decommissioned and no longer needed to be upgraded.
15. Singleton Simulcast Proposal Radio Shelter Change Out Credit – during CDR discussions, it was determined that the new radio shelter proposed for the Singleton Bend simulcast expansion would not be necessary. However, there would be required some modifications (such as HVAC, generator change out) that would be required to bring the existing shelter/site capable to support a simulcast subsystem.
16. MW Spur Bell Springs, Antenna Reuse Credit – during CDR discussions, it was determined that we would reuse the existing microwave (MW) dishes on this spur for this project. There will be a future project were these antennas will be replaced.
17. Creedmoor ARS Removed Credit – during CDR discussions, it was determined that the Creedmoor Astro Repeater Site (ARS) would no longer be needed. Additional simulcast sites will be provided in another project, that will provide coverage in the Creedmoor area.

ATTACHMENT B – Pricing Changes Breakdown

Site	Qty	Model #	Description	Austin Price Unit	Austin Price Total
YEAR 6 - ABOVE SCOPE CHANGE ORDER (CREDITS & COSTS)					1,268,147
TTA Re-Use From CW Repairs 3 Sites (Phase 5)					CREDIT -> (27,866)
Note - Not counting RLM - since that was demo equipment					
Lime Crk	-1	DSTA798201001000	RFI Tower Top Amplifier	6,090	(6,090)
Lime Crk	-1	DSRX699630013648N	RFI TTA Controller	2,218	(2,218)
Lime Crk	-1	DSPF7982101031N	RFI Post Filter, 10MHz	713	(713)
Lime Crk	-2	DS1090501WA	Polyphaser SPD Main Line	134	(269)
Sematech	-1	DSTA798201001000	RFI Tower Top Amplifier	6,090	(6,090)
Sematech	-1	DSRX699630013648N	RFI TTA Controller	2,218	(2,218)
Sematech	-1	DSPF7982101031N	RFI Post Filter, 10MHz	713	(713)
Sematech	-2	DS1090501WA	Polyphaser SPD Main Line	134	(269)
Four Pts	-1	DSTA798201001000	RFI Tower Top Amplifier	6,090	(6,090)
Four Pts	-1	DSRX699630013648N	RFI TTA Controller	2,218	(2,218)
Four Pts	-1	DSPF7982101031N	RFI Post Filter, 10MHz	713	(713)
Four Pts	-2	DS1090501WA	Polyphaser SPD Main Line	134	(269)
Change to Smaller Prime Site DC and No Batteries at Martin Hill (Phase 5)					CREDIT -> (63,460)
Martin	-1	LaMarche	DC 1000Amp, Inverter	40,996	(40,996)
Martin	1	Eltek	DC 600Amp, Inverter	32,621	32,621
Martin	-1	LaMonte	DC Batteries 2400AH	55,085	(55,085)
Martin	0	DSWLBG1200ST	DC Batteries 1200AH	21,990	-
Console Licenses Credit					CREDIT -> (14,400)
Marble Falls			Console License Transfer	(4,800)	(4,800)
GT Utility			Console License Transfer	(4,800)	(4,800)
Round Rock			Console License Transfer	(4,800)	(4,800)
Generator and Power Changes (Phase 5-6)					COST -> 48,872
Honeycomb	-1		Generac 100KW Outdoor, 500Gal Tank, ATS	38,040	(38,040)
Honeycomb	1		Cumins 80KW Outdoor Std Encl, 500Gal, ATS, 2Yr War	53,124	53,124
Collier	-1		Generac Diesel 100KW Indoor, 189Gal Tank, ATS	34,036	(34,036)
Collier	1		Cumins Diesel 80KW Indr, use rmt existing Tank, ATS	46,482	46,482
Collier	1		Add Trystar Shore Connector/install	10,671	10,671
Honeycomb	1		Add Trystar Shore Connector/install	10,671	10,671
Singleton			Add Trystar Shore Connector/install		Moto Covers
Bell Springs			Add Trystar Shore Connector/install		Moto Covers
HVAC Changes at Honeycomb & Collier (Phase 5)					COST -> 55,329
Honeycomb	-2	Equipment	HVAC W60A2 5 Ton HVAC	10,150	(20,300)
Honeycomb	4	Equipment	HVAC W42A2 3 1/2 Ton HVAC	8,832	35,327
Honeycomb	2	Install	Install 2 addtl HVAC, Wall Cut (2 Installs in Proposal)	3,618	7,236
Collier	2	Equipment	HVAC W42A2 3 1/2 Ton HVAC	8,832	17,663
Collier	2	Install	Install 2 addtl HVAC, Wall Cut (2 Installs in Proposal)	3,618	7,236
Collier	1	Install	Engineering Study/Wall Tear Down	8,167	8,167

Site	Qty	Model #	Description	Austin Price Unit	Austin Price Total
YEAR 6 - ABOVE SCOPE CHANGE ORDER (CREDITS & COSTS)					1,268,147
Existing Equipment Move in Racks (Phase 5)					-
Collier	1		Move Moscad, Bastrop eq/pwr, for existing AVPN box		Moto Covers
Collier	1		Move AVPN AC Panel to New Inverter		Moto Covers
Honeycmb	1		Move Moscad, Bastrop eq/pwr, for existing AVPN box		Moto Covers
7 Sites	1		Move AVPN AC Panel to New Inverter		Moto Covers
MX5 Connections for AVPN (Phase 5-6)					-
	25		Addtl SFP's - for AVPN redesign, Clocking, Motobridge	4,260	Moto Covers
CW Last 12 Channels, Additional Removals (Phase 5)				COST ->	40,615
Notes - Proposal scope included the removal of 1/2 of the CW Site 1 system equipment and 1 of the Tx antennas. The original plan was to keep CW on line for a period of time, or at least accessible to fall back to.					
10 Sites	20	Services	1 Tx, 1 Rx Antenna Removal Note - addtl tower climb already included in project	2,031	40,615
10 Sites	10	Services	Additional removal 2 STR Cabinets, Rmt Site Equip and Prime Site Equip/Racks	7,692	Moto Covers
Additional Antenna Removals Davis & Four Pts (Phase 5)				COST ->	6,338
Notes - Proposal scope included the removal of 10 general antennas and 2 microwave dishes at both Davis and Four Points. So this is the delta from that. Also, the additional removals at Martin were taken care of during the Geo Prime MW project					
Davis	4	Services	Extra removal antenna (over the 10 in proposal)	2,031	8,123
Four Pts	1	Services	Extra removal MW dish (over the 2 in proposal)	2,277	2,277
Four Pts	-2	Services	Less removal antenna (under the 10 in proposal)	2,031	(4,062)
Add T1 Capability to Bell Springs Spur (Phase 6)					-
	1		Bell Springs Spur DAC16GE	-	Moto Covers

Site	Qty	Model #	Description	Austin Price Unit	Austin Price Total
YEAR 6 - ABOVE SCOPE CHANGE ORDER (CREDITS & COSTS)					1,268,147

Additional Spares (Phase 5-6)			COST ->	55,003	
		Spares Above What's Included Proposal - Yr5 (Partial)			
Spares	5		GTR FRU Power Supplies	1,540	7,700
Spares	5		GTR FRU Power Amplifier Modl	840	4,200
Spares	5		GTR Transcievr Modl (Tx/Rx)	840	4,200
Spares	5		GTR Fan Module	144	721
Spares	1	Spares Above What's Included Proposal - Yr6 (Remaining)		-	
Spares	3		GCP/GCM Control Module	1,750	5,250
Spares	2		GGM8000 DC Router	3,360	6,720
Spares	2		DC Rectifier	688	1,376
Spares	1		GPS Receiver/Antenna	720	720
Spares	1		GPS Antenna Line	507	507
Spares	1		GPS Antenna Line Surge	198	198
Spares	1		GPS Antenna Mt	192	192
Spares	4		GTR xHUB Module	2,800	11,200
Spares	1		ESS Preselector	902	902
Spares	1		ESS Site RMC	700	700
Spares	1		ESS Rack RMC	700	700
Spares	1		ESS TX Combiner 6Chl	7,097	7,097
Spares	1		ESS TX Combnr Ph Harness	1,322	1,322
Spares	1		ESS TX Filter	1,299	1,299

Bell Springs & Singleton Change From ARS to Simulcast (Phase 6)				COST ->	2,071,934
	1		Bell Springs Simulcast	1,492,232	1,492,232
	1		Singleton Simulcast (with new shelter)	1,752,466	1,752,466
	-1		Bell Springs & Singleton ARS Credit in Yr6	757,764	(757,764)
	1		Bell Springs/Singleton/1101/1102 Sales Incentive	(415,000)	(415,000)

Tower Analysis for Barton, Singleton & Bell Springs (Phase 5-6)				CREDIT ->	(10,588)
	-1		Barton Creek		
	-1		Singleton		
	-1		Bell Springs		

Site	Qty	Model #	Description	Austin Price Unit	Austin Price Total
YEAR 6 - ABOVE SCOPE CHANGE ORDER (CREDITS & COSTS)					1,268,147

Lost Pines ARS Removed	CREDIT ->	(201,169)
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Singleton Simulcast Proposal Radio Shelter Change Out (Phase 6)					CREDIT ->	(57,160)
	-1		12 x 36 Shelter, HVAC, Electrical			(116,628)
	-1		Services Install 2 Shelters, Gen			(144,603)
	-1		Zoning/Permits			
	-1		Fencing/Site Prep			
	-1		Install 2 Shelters, Gen, Utility			
	1		(2) 5T and (2) 3 1/2T HVAC Units			37,963
	1		Services Install Gen Shelter/Gen, Mod Existing			166,108
	1		HVAC Install, Remove Old			
	1		Zoning/Permits			
	1		Fencing/Site Prep			
	1		Install 1 Shelter, Gen, Utility, ATS			
	1		Rework electrical existing shelter			
	1		Remove Old Generator			
	1		Engr Study, Saw cut Hole Wall			
	1		Move West Region Rack			

MW Spur Bell Springs, Antenna Reuse (Phase 6)					CREDIT ->	(28,232)
Barton	-155		Flexwell Elliptical Waveguide (EP65)	16		(2,480)
Barton	-2		Hardware-Kit (One kit per 100ft)	658		(1,315)
Barton	-1		E65 Install-Kit, 1 per WG run (E65-C137-INST-KIT)	2,110		(2,110)
Barton	-1		Boot Assy 4in w/ 1 Hole E65 (BOOT4-065)	109		(109)
Barton	-5		Snap Hanger Kit For E105, Kit Of 10 (917170)	166		(832)
Bell	-266		Flexwell Elliptical Waveguide (EP65)	16		(4,256)
Bell	-3		Hardware-Kit (One kit per 100ft)	658		(1,973)
Bell	-1		E65 Install-Kit, 1 per WG run (E65-C137-INST-KIT)	2,110		(2,110)
Bell	-1		Boot Assy 4in w/ 1 Hole E65 (BOOT4-065)	109		(109)
Bell	-9		Snap Hanger Kit For E105, Kit Of 10 (917170)	166		(1,498)
Both	-1		Services	11,440		(11,440)

Creedmoor ARS Removed	CREDIT ->	(607,069)
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Grand Total		1,268,147
Tech Credit Available (For Lifecycle Tech Credit)		1,287,167
Year 2 Left		20,499
Year 3		316,667
Year 4		316,667
Year 5		316,667
Year 6		316,667
Board Approved Funding, PO to Issue		780,510
Tech Credit Used		487,637
Tech Credit Lifecylce Left		799,530

ATTACHMENT C – Pricing Changes Summary

YEAR 6 - ABOVE SCOPE CHANGE ORDER (CREDITS & COSTS)		1,268,147
TTA Re-Use From CW Repairs 3 Sites (Phase 5)	CREDIT ->	(27,866)
Change to Smaller Prime Site DC and No Batteries at Martin Hill (Phase 5)	CREDIT ->	(63,460)
Console Licenses Credit	CREDIT ->	(14,400)
Generator and Power Changes (Phase 5-6)	COST ->	48,872
HVAC Changes at Honeycomb & Collier (Phase 5)	COST ->	55,329
Existing Equipment Move in Racks (Phase 5)		-
MX5 Connections for AVPN (Phase 5-6)		-
CW Last 12 Channels, Additional Removals (Phase 5)	COST ->	40,615
Additional Antenna Removals Davis & Four Pts (Phase 5)	COST ->	6,338
Add T1 Capability to Bell Springs Spur (Phase 6)		-
Additional Spares (Phase 5-6)	COST ->	55,003
Bell Springs & Singleton Change From ARS to Simulcast (Phase 6)	COST ->	2,071,934
Tower Analysis for Barton, Singleton & Bell Springs (Phase 5-6)	CREDIT ->	(10,588)
Lost Pines ARS Removed	CREDIT ->	(201,169)
Singleton Simulcast Proposal Radio Shelter Change Out (Phase 6)	CREDIT ->	(57,160)
MW Spur Bell Springs, Antenna Reuse (Phase 6)	CREDIT ->	(28,232)
Creedmoor ARS Removed	CREDIT ->	(607,069)

Grand Total	1,268,147
Tech Credit Available (For Lifecycle Tech Credit)	1,287,167
Board Approved Funding, PO to Issue	780,510
Tech Credit Used	487,637
Tech Credit Lifecycle Left	799,530



Amendment No. 2
to
Contract No. NS160000056
for
Communications System Agreement
between
Motorola Solutions, Inc.
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to include additional Scope of Work per attached Exhibit A, GATRRS – Wave as a Service.

2.0 The total Contract amount is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/04/2016 – 12/31/2020	\$35,000,000.00	\$35,000,000.00
Amendment No. 1: Contract extension	\$0.00	\$35,000,000.00
Amendment No. 2: Scope Modification	\$0.00	\$35,000,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

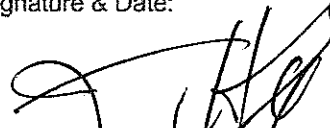
Signature & Date:

Printed Name: Richard R. Brink
Authorized Representative
Motorola Solutions, Inc.
1303 E. Algonquin Rd.
Schaumburg, IL 60196

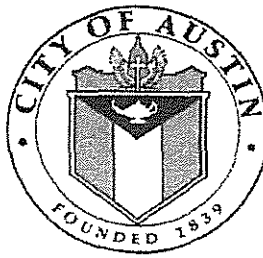
Signature & Date:

Sai Purcell, Procurement Specialist IV
City of Austin Purchasing Office

Signature & Date:

A handwritten signature in black ink, appearing to be 'J. Howard', written over a horizontal line.

Jim Howard, Procurement Manager
City of Austin Purchasing Office



Amendment No. 1
to
Contract No. NS160000056
for
Communications System Agreement
between
Motorola Solutions, Inc.
and the
City of Austin, Texas

- 1.0 The parties hereby agree to modify Section 4, Term of Agreement, of the above-referenced contract from 26 months to 52 months. Effective date of this change is March 5, 2018.

SECTION 4 TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date, and unless amended or terminated in accordance with other provisions of this Agreement, end on the later of (i) 52 months from the Effective Date, or (ii) Motorola's completion of all its obligations as set forth in the Agreement.

- 2.0 The total Contract amount is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/04/2016 – 12/31/2020	\$35,000,000.00	\$35,000,000.00
Amendment No. 1: Contract extension	\$0.00	\$35,000,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.


BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

 3/9/2018

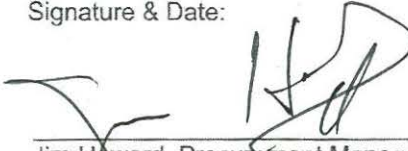
Printed Name: Richard T. Rysbec
Authorized Representative
Motorola Solutions, Inc.
1303 E. Algonquin Rd.
Schaumburg, IL 60196

Signature & Date:

 3/13/18

Sai Purcell, Procurement Specialist IV
City of Austin Purchasing Office

Signature & Date:



Jim Howard, Procurement Manager
City of Austin Purchasing Office

COMMUNICATIONS SYSTEM AGREEMENT
Between
The City of Austin
And
Motorola Solutions, Inc.

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Communications System Agreement

Motorola Solutions, Inc. a Delaware corporation (“Motorola”), and the City of Austin, a Texas home-rule municipal corporation (“City”), acting for itself and on behalf of the other governmental entities that have executed the Interlocal Agreement for the Operation and Maintenance of the Greater Austin-Travis County Regional Radio System (“Interlocal Agreement”), Exhibit E herein, collectively referred to herein as the “Customer,” enter into this Communications System Agreement (the “Agreement”), effective as of the date signed by City (the “Effective Date”), pursuant to which Customer will purchase and Motorola will provide Customer with APCO Project 25 (“P25”) Trunked Radio Communications System equipment and services.

WHEREAS, the City and other local governments desire to purchase additional equipment and services to expand or improve the City’s P25 Trunked Radio Communications System, known as the Greater Austin-Travis County Regional Radio System (“GATRRS”);

[The City to include any additional WHEREAS statements to meet its internal requirements];

NOW THEREFORE, the parties hereto, for in consideration of these promises and mutual obligations herein undertaken, do hereby agree as follow:

SECTION 1 EXHIBITS

The Exhibits below are hereby incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below.

Exhibit A Motorola Software License Agreement (“Software License Agreement”)

Exhibit B Technical Exhibits

With each purchase under this agreement, when determined by the parties to be necessary, “Technical Exhibits” will be included as part of the specific purchase and will apply only to such specific purchase. The “Technical Exhibits” may include as necessary a Statement of Work, a System Description, an Acceptance Test plan(s), Project Schedule, and an Equipment List.

Exhibit C Motorola Service Agreement (“Service Agreement”)

Exhibit D Pricing Agreement (“Pricing Agreement”), _____ 2016

Exhibit E Interlocal Agreement for the Operation and Maintenance of the Greater Austin-Travis County Regional Radio System (“Interlocal Agreement”)

Exhibit F Change Order Form

SECTION 2 DEFINITIONS

Except as expressly provided otherwise in this Agreement or in Exhibits A-F, the following capitalized terms apply to this Agreement.

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- 2.1. "Acceptance Test Plan" and "ATP" shall mean the negotiated, mutually agreed upon method of testing the System as set forth in Exhibit B.
- 2.2. "Agreement" means this agreement, including all exhibits attached thereto, which is the binding legal agreement between the Customer and Motorola for the purchase of the Communications System equipment and services. As to subscriber equipment, the Customer has agreed to issue separate Purchase Orders for the subscriber equipment required by them pursuant to the Interlocal Agreement in accordance with Texas Government Code Chapter 791. No deliveries of subscriber equipment will be made by Motorola under the Agreement until an order is placed by each Eligible Users by the issue of such a Purchase Order.
- 2.3. "Appropriate," "Appropriated," or "Appropriation" means the adoption by the City Council of Austin, Texas or an Eligible User's budget for a fiscal year that includes payments to be made under the Agreement during the respective fiscal year.
- 2.4. "Authorized City Representative" means a person designated by the City Manager to act for the City of Austin.
- 2.5. "City" means City of Austin, a Texas home-rule municipal corporation.
- 2.6. "Communications System" or "System" is the City's current P25 Trunked Radio Communications System.
- 2.7. "Customer" means City of Austin and the participating governmental agencies or entities of the Radio Communications Coalition that have executed the Interlocal Agreement, Exhibit E. Wherever indemnification, warranty, confidentiality, and other clauses refer to the "Customer", they shall include not only the City of Austin, but also the other Eligible Users; and the Confidential Information of the Customer shall include the Confidential Information of all of the Eligible Users.
- 2.8. "Deliverables" means the goods, products, materials, Documentation, Equipment, Software, and/or Services to be provided to the Customer by Motorola for the System.
- 2.9. "Disadvantaged Business Enterprise" is defined in 49 CFR 23.62 or other applicable federal regulations.
- 2.10. "Documentation" shall mean all user/operation and training manuals, detailed system design document, acceptance testing plan and results, as-built documentation, and other materials or information describing the Motorola and Non-Motorola Equipment and Software, as hereinafter defined, its performance characteristics, technical features and other relevant information reasonably required for use of any Equipment purchased under this Agreement for the P25 trunked radio system, and Software, including all physical media upon which the materials or information are provided.
- 2.11. "Eligible User" means a governmental entity that has entered into the Interlocal Agreement with City of Austin as the same may be amended.
- 2.12. "Equipment" is the equipment purchased under this Agreement or as set forth in an Exhibit B Equipment List.

- 2.13. "Exhibit" or "Exhibits" shall mean the Exhibits attached to this Agreement, including their attachments, which are incorporated as part of this Agreement.
- 2.14. "System Acceptance" shall mean successful passing of any Acceptance Tests in Exhibit B. Customer cannot commence use of the Equipment until the successful completion of the Acceptance Tests, if any. In no event shall payment constitute acceptance or any conditional acceptance operate as acceptance under this Agreement.
- 2.15. "Interlocal Agreement" is the Interlocal Agreement for the Operation and Maintenance of the Greater Austin-Travis County Regional Radio System, attached hereto as Exhibit E, and entered into between the City of Austin and other governmental agencies or entities concerning their participation in the P25 Trunked Radio Communications System being provided by Motorola pursuant to this Agreement.
- 2.16. "Minority-Owned Business" is defined in chapter 5-7, 1992 City Code.
- 2.17. "Motorola Software" is software whose copyright is owned by Motorola.
- 2.18. "Non-Motorola Software" is third party software whose copyright is owned by a party other than Motorola, including both software licensed directly by a third party vendor to the Customer or sub-licensed by Motorola to the Customer.
- 2.19. "Offer" means a complete signed response submitted to City in response to a request from the City.
- 2.20. "Purchase Order" is an order placed by the City Purchasing Office for the purchase of Deliverables written on the City's standard Purchase Order form referencing this Agreement and which, when accepted by Motorola, becomes a contract. Purchase Orders may also be issued by the other Eligible Users on their standard Purchase Order form for Deliverables required by such Eligible Users, in which case, such purchase order is Motorola's authority to deliver and invoice that Eligible User for the Deliverables specified and the Eligible User's commitment to purchase the Deliverables for an agreed upon price. Such Purchase Orders are subject to the applicable terms and conditions of this Agreement, including the Software License Agreement. No pre-printed or similar terms on any Purchase Order or other document shall have any force or effect to change the terms, covenants, and conditions of this Agreement. The City will not be responsible for the commitments made by such Eligible User. The resolution of any disputes between Motorola and such Eligible User must be pursued with such Eligible User under the overall framework of this Agreement.
- 2.21. "Purchasing Office" refers to the Purchasing Office in the Financial and Administrative Services Department for the City of Austin.
- 2.22. "Services" means the services provided by Motorola as set forth in this Agreement.
- 2.23. "Software" means programs, firmware and other licensed information for use with the System and includes, (when purchased), all future enhancements and core releases purchased by the Customer. The term includes Motorola and any Non-Motorola Software that is furnished with the Communications System. Software includes all physical media upon which the materials or information are provided.

- 2.24. "Statement of Work" means the document that specifies work to be completed and the responsibilities of both parties as set forth in Exhibit B for any specific purchase.
- 2.25. "System" See the definition for "Communications System", supra.
- 2.26. "System Description" means the complete description of the Communications System as set forth in Exhibit for any specific purchase.
- 2.27. "UCC" refers to the Uniform Commercial Code, as enacted by the State of Texas; whenever a term defined by the UCC is used in the Agreement, the UCC shall control, unless otherwise defined in the Agreement.
- 2.28. "Woman-Owned Business" is defined in chapter 5-7, 1992 City Code.

SECTION 3 SCOPE OF AGREEMENT

3.1. PROJECT RESPONSIBILITIES

Motorola and Customer agree to perform their responsibilities in accordance with the Project Schedule set forth in the Exhibit B.

3.2. SCOPE OF WORK

Motorola shall provide the Equipment and perform the Services described in Exhibit B and provide warranty services as set forth in Section 9.

3.3. CHANGE ORDERS

3.3.1. CHANGE ORDER PROCEDURE

Either party may request changes within the scope of work for this Agreement. A change order request must describe any changes in any of the Deliverables required for the specific purchase. Within thirty (10) days after receipt of the Customer's change order request, Motorola must provide the Customer with a proposal describing any changes in the Deliverables, functions, timing of delivery, assignment of personnel, price, and performance schedule given the proposed change. Customer will review such proposal and contact Motorola within 10 days of receipt of proposal. If a requested change causes an increase or decrease in the price of or time required for the performance of this Agreement, Motorola shall describe, in detail, the basis for the price or time adjustment. Before any changes are implemented, the Change Order Form, as attached as Exhibit F must be accepted and approved by both parties. Motorola is not obligated to comply with requested changes unless and until both parties execute a written change order.

3.3.2. CHANGE ORDER PRICE ADJUSTMENTS

To the extent that additional price or price savings result from a change in the required Deliverables, Motorola shall obtain additional Deliverables (including drop ship and

OEM products) and provide them to the Customer at the product/material/service Price set forth in the Pricing Agreement, Exhibit D.

3.3.3. SYSTEM EQUIPMENT CANCELLATION CHANGE ORDER

If any unused Motorola manufactured Equipment is cancelled solely at the discretion of the Customer after it has been shipped, and that item of Equipment cannot be used elsewhere in the Project, the Customer shall pay the return shipping cost and shall be granted credit against the Total Contract Price, less a restocking charge of 15% for the returned Equipment.

3.3.4. ACCEPTANCE TEST PLAN DEFICIENCY

If Motorola is required to add or upgrade Equipment, Services, or Software to meet the Acceptance Test Plan requirements in Exhibit B, Motorola shall do so at Motorola's expense.

3.4. MAINTENANCE SERVICE

During the first year after System Acceptance or delivery if there is no System Acceptance for a specific purchase, maintenance services and software support are provided pursuant to the terms of this Agreement including any above-warranty services described in a Statement of Work that applies to the specific purchase. Such services are included in the purchase price. After the Warranty Period, Customer may purchase maintenance services and software support for the new Equipment pursuant to Exhibit C, Service Agreement.

3.5. MOTOROLA SOFTWARE

Any Motorola Software furnished will be licensed to Customer solely according to the terms of the Software License Agreement attached as Exhibit A, except for any Motorola provided Software Development Kit which will have a separate license (e.g. Elite Applications Programmers Interface (API), SmartZone Computer Aided Dispatch Interface (CADI)).

3.6. NON-MOTOROLA SOFTWARE

Non-Motorola Software provided by Motorola as part of the System will be licensed either under the Software License Agreement (Exhibit A) or under a separate software license agreement directly between Customer and the owner of the copyright to the Non-Motorola Software. The license that will apply depends on whether the owner of the copyright has granted to Motorola a license to such Non-Motorola Software with the right to sub-license it to Motorola's customers. If so, the Software License Agreement will apply. If not, then the license will be direct between the Customer and the copyright owner.

3.7. SOFTWARE WARRANTY CLAIMS

The software warranties are found in the applicable software license agreements. With respect to Non-Motorola Software which is not covered by the Software License Agreement but is covered by a separate software license agreement directly between the Customer and the owner of the copyright

to the Non-Motorola Software, Motorola's duties as the 'single point of contact' for software warranty claims shall include participating with and assisting the Customer's representatives in asserting and handling such warranty claims. This particular duty of Motorola will be performed by the System Support Center with assistance from the Motorola 'Customer Support Manager (CSM)' and other appropriate Motorola employees.

3.8. REPLACEMENT PARTS

- 3.8.1. Motorola's intent is to offer replacement parts for the System to meet the Customer's needs, however, all vendors are subject to the action of suppliers. Motorola will make available replacement parts for the Infrastructure for Motorola manufactured equipment for a minimum of 7 years following the date of the announcement that the product has been cancelled. Motorola will supply replacement parts for User Equipment for a period of five (5) years following the date of shipment
- 3.8.2. However, if a product is cancelled and parts are not available, upon trade-in for a replacement radio System component, Motorola will provide the Customer with a prorated credit of the replaced radio System component toward the purchase of an equivalent model of the same item (the credit will be based on a straight line pro-ration and assume a seven year life of the replaced radio System component).

SECTION 4 TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date, and unless amended or terminated in accordance with other provisions of this Agreement, end on the later of (i) 26 months from the Effective Date, or (ii) Motorola's completion of all its obligations as set forth in the Agreement.

SECTION 5 PRICE AND PAYMENT AGREEMENT

5.1. CONTRACT PRICE

The Customer shall pay Motorola, and Motorola shall accept as full compensation and payment for the Equipment and Services, including first year warranty/maintenance as stated in each specific purchase. The Pricing will be in accordance with Exhibit D (Pricing Agreement).

5.2. CONTRACT PAYMENT

Payments will be due upon delivery of the Equipment or performance of the Services unless otherwise stated in the proposal or statement of work for a specific purchase. Customer agrees to make payments to Motorola thirty (30) days after a proper invoice is received for the Equipment or Services. Invoices shall be submitted to the following address as applicable:

City of Austin	User Equipment
Wireless Comm System Manager City of Austin 1006 Smith Road	Submit invoices to the payment address specified in the Eligible User's Purchase Order.

Austin, TX 78721	
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5.3. ELECTRONIC DATA INTERCHANGE (“EDI”)

If Customer and Motorola have agreed to a convention for processing electronic data interchange (“EDI”) transactions, purchase orders may be transmitted electronically. Each purchase order must specifically refer to this Agreement and will be an offer by Customer subject to Motorola’s acceptance. Except for pricing and delivery terms, which must be stated on the purchase order, Customer and Motorola agree that the applicable terms of this Agreement and Exhibits will be the terms and conditions that govern the purchase and sale of products identified on such purchase orders. Customer and Motorola agree that payment for all additional products so purchased will be due thirty (30) days from receipt of invoices or Deliverable, whichever is later as stated in Section 5 Payment provision.

5.4. PRICES FOR EQUIPMENT AND TECHNOLOGY SUPPORT

Prices for maintenance and support shall be as set forth in the schedules in the Pricing Agreement, Exhibit D.

5.5. OVERDUE NOTICES

Overdue invoices will bear interest at a rate of the lesser of one percent per month or the maximum rate allowed by law. If the payment is not timely made, however, for a reason for which Customer may withhold payment hereunder, interest shall not accrue until ten days after the grounds for withholding payment have been resolved.

5.6. NON-APPROPRIATION

5.6.1. City’s payment obligations are payable only and solely from funds Appropriated and available for the purpose of this purchase. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to Motorola. City shall provide Motorola written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement.

5.6.2. In no event shall the Customer be obligated to pay or otherwise compensate Motorola for any lost or expected future profits. No penalty shall accrue to Customer in the event termination or reduction of Motorola equipment, products, or services is exercised, and the Customer shall not be liable for any future payments due or for any damages as a result of termination of the Agreement under this provision.

5.7. PAYMENT FOR CHANGES

The Customer shall not be obligated to pay for any changes to the Project unless a Change Order Form has been executed by the Customer and Motorola in accordance with Section 3.4. Payment for Change Orders not related to a Project Milestone will be as mutually agreed upon.

SECTION 6 SITES AND SITE CONDITIONS

6.1. CUSTOMER RESPONSIBILITIES

In addition to its responsibilities described in the Agreement and Exhibits, including the Statement of Work, Customer agrees to procure any necessary construction permits, building permits, zoning variances and the like, provide access to the sites for this System as identified in Exhibit B as requested by Motorola, and have such sites available for installation of the Equipment by Motorola in accordance with the Statement of Work.

6.2. SITE AVAILABILITY

This Agreement is predicated on the utilization of sites and site configurations, which have been selected either by the Customer or Motorola as contained in Motorola's proposal and as revised in the Exhibits. In either situation, should it be determined by either party during the course of performance of this Agreement that the sites or configurations are no longer available or desired, new or replacement sites or configurations will be selected and approved by both Motorola and the Customer. If any price or schedule adjustments are necessary as a result of these new or replacement sites, such adjustments will be made in accordance with Change Order procedures set forth in Section 3.4.

SECTION 7 TRAINING

Training is included in this Agreement if set forth in Exhibit B. Both parties agree to notify each other immediately if a date change for a scheduled training program is required. Motorola and the Customer will work closely together to minimize any impact such changes may have.

SECTION 8 ACCEPTANCE

8.1. SYSTEM ACCEPTANCE

System Acceptance shall occur as described in the definitions, Section 2 of this Agreement.

8.2. ACCEPTANCE PROCEDURES

Motorola shall notify the Customer in writing when Motorola determines that the Equipment or Services are ready for acceptance testing in accordance with the Statement of Work and Acceptance Test Plan. The parties will then perform the Acceptance Test Plan in accordance with the mutually agreed upon schedule. Upon achieving System Acceptance, the parties will execute a certificate of acceptance for the Equipment or Services that were subject to the tests..

SECTION 9 WARRANTY

9.1. WARRANTY PERIOD

The Warranty Period is one year from the earlier of the date of System Acceptance or beneficial use or delivery if there is no System Acceptance. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.1.1. WARRANTY PERIOD EXTENDED FOR RECURRING DEFECTS

During the Warranty Period, should any Equipment experience the same recurring valid warranty claim three or more times within a six month period, then once Motorola has restored the operation of the Equipment, the Warranty Period for that item will be either the remaining time of the original Warranty Period, or six (6) months from the date of restoration, whichever is longer.

9.1.2. WARRANTY CLAIMS

Customer must promptly notify Motorola in writing of any warranty claims but in no event later than one month after the expiration of the applicable Warranty Period.

9.2. EQUIPMENT WARRANTY

9.2.1. WARRANTY TERMS

During the applicable Warranty Period, Motorola warrants the Equipment will be free from material defects (i.e. meaning a defect that impacts the successful operation of the Equipment) in the manufacture, materials and workmanship under normal public safety use; conforms in all material respects to the manufacturer's specifications, drawings, and functional descriptions; conforms to all applicable Federal, State and local laws, rules and regulations. The Equipment, as delivered, shall be new and unused and in first class condition or recycled items, and not used or reconditioned. However, Motorola makes no representations or warranties concerning the materials or components contained in the Equipment. All Equipment and its materials and components, are fully covered by the warranties provided by Motorola. If any of the Equipment is defective, Motorola will at its option and cost (1) repair the defective Equipment, (2) replace it with the same or equivalent Equipment, or (3) if despite using reasonable efforts Motorola is unable to repair or replace the defective Equipment, then refund the purchase price of the defective Equipment. If Motorola is unable or unwilling to repair or replace defective or non-conforming Equipment, Customer may reduce the quantity of Equipment it may be required to purchase under the Agreement from Motorola and may purchase conforming Equipment from other sources. In such event, Motorola shall pay to Customer upon demand the increased cost of conforming Equipment, if any, actually incurred by Customer. Repaired or replaced Equipment is warranted for the balance of the original applicable Warranty Period or for ninety (90) days from delivery to Customer, whichever is later. All replaced parts of the Equipment shall become the property of Motorola.

9.2.2. WARRANTY EXCLUSIONS

9.2.2.1. This warranty does not apply to:

- 9.2.2.1.1. Defects or damage resulting from use of the Equipment in other than its normal and customary manner.
- 9.2.2.1.2. Defects or damage occurring from misuse, accident, water exceeding the Equipment specifications, or neglect.
- 9.2.2.1.3. Defects or damage occurring from testing, maintenance, installation, alteration, modification, or adjustment not provided by Motorola pursuant to this Communications System Agreement.
- 9.2.2.1.4. Equipment that has been subjected to unauthorized Equipment modifications, disassembly or repairs (including the addition to the Equipment of non-Motorola supplied equipment if not authorized by Motorola) which adversely affect performance of the Equipment or interfere with Motorola's normal warranty inspection and testing of the Equipment to verify any warranty claim.
- 9.2.2.1.5. Portable Batteries (because they carry their own separate limited warranty).
- 9.2.2.1.6. Equipment which, due to illegal or unauthorized alteration of the software/firmware in the Equipment, does not function in accordance with Motorola's published specifications or with the FCC type acceptance labeling in effect for the Equipment at the time the Equipment was initially distributed from Motorola.
- 9.2.2.1.7. Minor scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment.
- 9.2.2.1.8. Software (because Software is warranted pursuant to the warranty in the Software License Agreement).
- 9.2.2.1.9. Normal and customary wear and tear.

9.2.2.2. Customer may purchase an extended service plan concerning mobiles and portables. If the Customer purchases this plan, the services are described in the plans statement of work and governed by the Service Agreement in Exhibit C.

9.3. WARRANTY OF TITLE

Motorola warrants that when title to the Equipment furnished under this Agreement passes to Customer, as provided herein, Customer will receive good and indefeasible title to the Equipment free and clear of any liens, claims, security interests, and encumbrances. Motorola shall indemnify and hold Customer harmless from and against all adverse title claims to the Equipment.

9.4. SERVICES WARRANTY

- 9.4.1. Motorola warrants that during the Warranty Period, the installation and repair services provided under this Agreement shall be performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the provisions of this Agreement, and all applicable Federal, State and local laws, rules and regulations. If Motorola performs such services in a manner that does not conform to this warranty, Motorola will at its cost re-perform the services in accordance with this warranty.
- 9.4.2. If it becomes necessary for the Customer to contract with another vendor for warranty repairs, due to inability or failure of Motorola to perform such repairs, Motorola shall reimburse the Customer for all invoices for labor, materials required and the shipping/handling costs thereof, to perform such repairs, within 30 days from presentation of such Customer invoices. This shall only occur after Motorola has been given written notice to respond and correct any problem. Motorola will have thirty (30) days from the receipt of such notice either to resolve the problem or to provide a plan of action that is acceptable to Customer to correct such problem. The cost limitation for such repairs will not exceed the parts and labor replacement price of the repair.

9.5. MOTOROLA SOFTWARE WARRANTY

Motorola Software is warranted in accordance with the terms of the Software License Agreement attached as Exhibit A, except for any Motorola provided Software Development Kit which will have a separate license (e.g. Elite Applications Programmers Interface (API), SmartZone Computer Aided Dispatch Interface (CADI))

9.6. WARRANTY NOT ASSIGNABLE

These express warranties as set forth in this Section are extended by Motorola to the Customer purchasing or leasing the System for commercial, industrial, or governmental use only, and is not assignable or transferable.

9.7. THIRD PARTY WARRANTY PASS THROUGH

Concerning any Equipment provided to Customer under this Agreement that is manufactured by a party other than Motorola and such Equipment has a manufacturer's warranty with a term longer than the Warranty Period, Motorola hereby assigns to Customer the manufacturer's warranty effective as of the expiration of the Warranty Period. During the Warranty Period, Motorola shall be responsible for administering and enforcing all third-party warranty provisions of the P25 Equipment and other Deliverables provided by Motorola pursuant to this Agreement. After the expiration of the Warranty Period, any third-party remaining warranties for Equipment or other Deliverables supplied by Motorola to fulfill the requirements of this Agreement shall be administered by the Customer.

9.8. NO DISABLING CODE

Motorola represents and warrants to Customer that Motorola has no knowledge that the Deliverables contain any (a) software routine designed to disable any of the Deliverables automatically with the passage of time or under the positive control of someone other than Customer or an authorized Motorola representative, or (b) software routine designed (i) to permit

access unauthorized by Customer to any of the Deliverables; (ii) to disable, erase, or otherwise harm any of the Deliverables or data; or (iii) to perform any other similar unauthorized actions.

9.9. DISCLAIMER

MOTOROLA DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, , INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WARRANTY CLAIMS ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION SET FORTH IN SECTION 16 OF THIS AGREEMENT.

SECTION 10 FEDERAL COMMUNICATIONS COMMISSION ("FCC") LICENSES AND AUTHORIZATIONS

In accordance with the Statement of Work, Customer and Motorola agree to perform the stated duties in connection with obtaining FCC licenses for the System and FCC frequency coordination and licensing of the microwave component of the System. Customer agrees that all FCC licenses and authorizations required for installation and use of the Communications System must be obtained prior to the scheduled installation of the Equipment. In no event will Motorola or any of its employees be an agent or representative of Customer in FCC matters. Customer is solely responsible for obtaining all FCC licenses and for complying with FCC rules.

SECTION 11 DELAYS

11.1. PROJECT IMPLEMENTATION

Successful project implementation will require cooperation and fairness between the parties. Because it is impractical to provide for every contingency which may arise during the course of performance of this Agreement, the parties agree to notify the other if they become aware that any condition will significantly delay performance. The parties will agree to reasonable changes to the Project Schedule in the Statement of Work by completing and executing a written Change Order Request Form.

11.2. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, unusual weather conditions, fire, riots, labor disruptions, sabotage or any other cause beyond the reasonable control of such Party ("Force Majeure"). In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

11.3. PROJECT DELAYS

- 11.3.1. Customer will make available to Motorola the sites when scheduled and Customer will not otherwise unreasonably delay or prevent Motorola's performance of its

responsibilities. If Customer materially delays Motorola's performance, the Project Schedule as set forth in Exhibit B may be extended by the parties, and the parties will execute a Change Order, if required to adjust the project schedule and/or to compensate Motorola for reasonable charges incurred because of such delays. Such charges include, but are not limited to, costs incurred by Motorola and/or its subcontractors for additional freight, warehousing and handling; suspending and re-mobilizing the work; additional engineering and standby time calculated at then current labor-day rates; and preparing and implementing a "work around" plan.

- 11.3.2. Customer may delay scheduled delivery or other due dates by written Notice to Motorola if Customer deems it is in its best interest. If such delay causes an increase in the cost of work or extends the work schedule in the Agreement, Customer and Motorola shall negotiate an equitable adjustment for costs incurred by Motorola in the Contract Price, extend the work schedule as appropriate, and execute a Change Order. Motorola must assert its right to an adjustment within forty-five (45) days from the date of receipt of the notice of delay. Failure to agree on the adjusted price shall be handled under the Dispute Resolution process specified herein.
- 11.3.3. If Motorola materially delays the Customer, the Project Schedule as set forth in the Statement of Work may be extended, and the parties will execute a Change Order pursuant to the Change Order process herein.

SECTION 12 DEFAULT AND TERMINATION

12.1. DEFAULT

If Motorola 1) fails to timely complete and perform its material obligations or duties in the performance of this Agreement, 2) fails to provide adequate written assurance of performance upon the demand of City; 3) becomes insolvent or seeks relief under the bankruptcy laws of the United States; or 4) makes fraudulent statements to the City in relation to the Project ("Event of Default"), Motorola shall be in default of this Agreement. City agrees to give Motorola written notice of such default. Motorola will have thirty (30) days from the receipt of such notice either to cure the default or to provide a plan of action that is acceptable to City to cure the default. In the event that the City determines the plan is unacceptable or Motorola fails to cure the default, the City shall have the right to terminate the Agreement for cause.

12.2. TERMINATION WITH CAUSE

If Motorola fails to timely cure the Event of Default or fails to submit a plan of action that is acceptable to the City, City may terminate this Agreement for cause, in whole or part, by giving written notice to Motorola. If the Agreement is terminated for cause, Motorola shall relinquish to the City all interest, title, and ownership in and to the System and Deliverables delivered to and in possession of the City including but not limited to perpetual use of the Software, subject to the terms of the Software License Agreement. Additionally, if the City terminates this Agreement for cause, the City may remove Motorola from the City's vendor list for three (3) years and any competitive bid response submitted by Motorola to City may be disqualified for up to three (3) years.

12.3. DAMAGE UPON DEFAULT

Motorola is liable for any damages, costs, losses, and expenses incurred by the City as a result of Motorola's default including without limitation, actual damages, costs, cost of cover, reasonable attorneys' fees, court costs, prejudgment interest and post-judgment interest at the maximum lawful rate. If City purchases the Equipment or Services through a third party, Motorola is liable for the reasonable costs exceeding the Contract Price that are necessary for purchasing the Equipment or Services as required by this Agreement. City agrees to use its best efforts to mitigate such damages and costs. Motorola's liability under this Section is subject to the limitations of the Section entitled Limitation of Liability of this Agreement. City is entitled to pursue any other remedy available at law or equity. The City shall have no financial obligation to compensate Motorola for terminated Deliverables shipped after the Notice of Termination. THE REMEDIES PROVIDED IN THIS SECTION OF THE AGREEMENT WILL BE THE FULL EXTENT OF THE CITY'S REMEDIES IN THE EVENT OF DEFAULT.

12.4. TERMINATION WITHOUT CAUSE

- 12.4.1. City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) days' prior written notice. Upon receipt of a notice of termination, Motorola shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. If this Agreement is terminated without cause, Motorola shall relinquish to the City all interest, title, and ownership, including but not limited to perpetual use of any proprietary rights in and to the System and Deliverables delivered to and in possession of the City, subject to the terms of the Software License Agreement. Title to Software shall not pass to City at any time. City shall be liable to Motorola for Equipment and Services provided to the date of notice to terminate and for reasonable, allowable, and allocable costs incurred by Motorola in the termination of subcontracts, removal of installation, and test equipment, and other costs directly related to an unforeseen and abrupt termination without cause by City. Motorola shall submit documentation to support all claimed costs.
- 12.4.2. If Motorola timely submits sufficient documentation and City approves thereof, City shall pay Motorola, to the extent of funds Appropriated or otherwise legally available for such purposes and not otherwise recoverable from other sources by Motorola, for all Deliverables received and Services performed and obligations incurred prior to the date of termination and for reasonable, allowable, and allocable costs incurred by Motorola in the termination of subcontracts, removal of installation, and test equipment, and other costs directly related to an unforeseen and abrupt termination without cause by City. In no event, shall the City be liable for any loss of profits on the terminated portion of this Agreement. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

SECTION 13 INDEMNIFICATION, PATENT AND COPYRIGHT INFRINGEMENT

13.1. INDEMNIFICATION

13.1.1. Motorola shall defend, indemnify, and hold Customer, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims to the extent due to, concerning or resulting from the Fault of Motorola, or Motorola's agents, employees or subcontractors, in the performance of Motorola's obligations under this agreement. Nothing herein shall be deemed to limit the rights of Customer or Motorola (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

13.1.2. INDEMNIFIED CLAIMS.

13.1.2.1. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, made against the Customer for:

13.1.2.1.1. physical damage to or loss of the property of any person (including, but not limited to Customer, Motorola, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

13.1.2.1.2. death, bodily injury, illness, disease, or loss of services to any person (including but not limited to the agents, officers and employees of Customer, Motorola, Motorola's subcontractors, and third parties),

13.1.2.2. Notwithstanding the City's right to defend itself, where Motorola is defending the City, Motorola agrees that its attorneys will cooperate with the City's attorneys or other representatives and keep them informed as to the progress and status of any litigation and settlement discussions in connection with such litigation. Motorola's attorneys will exclusively handle the litigation, but the City's attorneys, at the City's expense, may attend court proceedings and related meetings, as well as review and comment on documents.

13.1.2.3. In no instance shall Motorola be responsible for the costs of the City's defense team or Indemnified Claims should the City choose to defend itself.

13.1.2.4. Should Motorola and the City mutually agree that the City should defend an Indemnified Claim in its own name, then Motorola agrees to retain the City's staff attorneys, mutually agreed outside attorneys, and/or professionals and compensate them for the costs of defending the claim under the direction of Motorola. Motorola will also pay any expenses, losses, and judgments attributable to the Indemnified Claims.

13.1.3. FAULT shall include the sale of defective Deliverables, negligence, intentional torts or recklessness, or a breach of any legally imposed strict product liability.

13.2. PATENT AND COPYRIGHT INFRINGEMENT

Motorola agrees to indemnify, defend, and hold harmless Licensee from all claims, losses, and liabilities resulting from any claims or challenges to Motorola's title to the licensed Motorola Software and Equipment and Motorola's rights to sublicense Non-Motorola Software. Motorola

will defend and indemnify, and hold harmless at its own expense, any suit brought against the Customer, as Licensee, to the extent that it is based on a claim that the Equipment or Motorola Software infringes a United States patent, copyright or intellectual property right of any third party, and Motorola will pay those costs and the damages awarded against the Customer in any such suit which are attributable to any such claim, but such defense and payments are conditioned on the following: i) Motorola must be notified promptly in writing by Customer of any notice of such written claim; ii) Customer provides Motorola with the necessary cooperation, assistance, and information in order for Motorola to perform its obligations under this Section; and iii) Motorola will have sole control of the defense of such suit and all negotiations for its settlement or compromise provided Motorola keeps Customer updated and advised with regard to all settlements and compromises ; and iv) should the Equipment or Motorola Software become, or in Motorola's opinion be likely to become, the subject of a claim of infringement of a United States patent or copyright, Customer will permit Motorola, at its option and expense, after consulting with Customer to i) procure for Customer the right to continue using the Equipment or Motorola Software (as contemplated under this Agreement) from the complaining party; ii) replace the infringing Equipment or Motorola Software with a substantially compatible, non-infringing functional equivalent; or iii) modify the same so that it becomes non-infringing without substantially impairing its functionality or the functionality of all of the Equipment and Software. If Motorola, using reasonable efforts, is unable to accomplish any of the foregoing, Motorola may grant Customer a credit for the Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be based upon generally accepted accounting standards for such Equipment and Motorola Software. Motorola will have no liability with respect to any claim of patent or copyright infringement which is based upon the combination of the Equipment or Motorola Software furnished hereunder with software, apparatus or devices not furnished by Motorola under this Agreement or otherwise contemplated for use. Motorola shall not have any liability for the use of ancillary equipment or software not furnished by Motorola under this Agreement which is attached to or used in connection with the Equipment or otherwise contemplated for use. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment and Motorola Software or any parts thereof.

SECTION 14 INSURANCE *(THE CITY SHOULD PROPOSE THEIR STANDARD INSURANCE REQUIREMENTS THAT MSI CAN REVIEW)*

SECTION 15 DISPUTE RESOLUTION

15.1. NEGOTIATIONS

If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as

described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

15.2. MEDIATION

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with the resolution of the dispute. Should they choose this option, Motorola and Customer agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. Customer and Motorola will share the costs of mediation equally. The mediation will be non-binding.

SECTION 16 LIMITATION OF LIABILITY

Notwithstanding any other provision to this Agreement, except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the current Contract Amount. For Eligible Users other than the City, Motorola's total liability will be limited to the amount of their Purchase Orders. In no event will MOTOROLA be liable for any loss of use, loss of time, inconvenience, lost profits or savings, or other SPECIAL, incidental or consequential damages IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This Limitation of Liability will survive the expiration or termination of this Agreement.

SECTION 17 SUBCONTRACTORS

17.1. SUBCONTRACT

Work performed for Motorola by a Subcontractor shall be pursuant to a written Agreement between Motorola and Subcontractor. The terms of the subcontract may not conflict with the terms of the Agreement, and shall contain provisions that:

- 17.1.1. Require that all deliverables to be provided by the subcontractor be provided in strict accordance with the provisions, specifications and terms of the agreement;
- 17.1.2. Prohibit the subcontractor from further subcontracting any portion of the agreement without the prior written consent of Motorola. City may require, as a condition to such further subcontracting, that the subcontractor post a payment bond in form, substance and amount acceptable to City;
- 17.1.3. Require subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to Motorola in sufficient

time to enable Motorola to include same with its invoice or application for payment to City in accordance with the terms of the agreement;

- 17.1.4. Require that all subcontractors obtain and maintain, throughout the term of their agreement, worker's compensation and employer's liability insurance, commercial general liability insurance, and business automobile liability with a minimum policy limit of \$1,000,000, with City being listed as an additional insured.

17.2. RESPONSIBILITIES

Motorola shall be fully responsible to Customer for all acts and omissions of the Subcontractors just as Motorola is responsible for Motorola's own acts and omissions, including indemnification. Nothing in the Agreement shall create for the benefit of any such Subcontractor any contractual relationship between Customer and any such Subcontractor, nor shall it create any obligation on the part of Customer to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

17.3. PAYMENT

Motorola shall pay each Subcontractor its appropriate share of payments made to Motorola in accordance with the subcontract payment terms.

SECTION 18 OTHER AGREEMENTS

18.1. TITLE AND RISK OF LOSS

Title to the Equipment will pass to Customer upon delivery to the Customer's designated sites. Customer shall have the right to inspect and inventory the Equipment. Risk of loss for the Equipment will pass to Customer only upon installation at Customer's designated sites, on a site-by-site basis. For mobiles, portables, control stations, and accessories, risk of loss will pass to Customer upon delivery to Customer. Title to Software will not pass to Customer at any time.

18.2. INDEPENDENT CONTRACTOR

This Agreement shall, not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Motorola's services shall be those of an independent contractor. Motorola agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

18.3. WORKFORCE

Motorola shall employ only orderly and competent workers, skilled in the performance of the services they will perform under this Agreement. Motorola, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on Customer's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. If Customer or Customer's representative notifies Motorola that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms,

or has possessed or was under the influence of alcohol or drugs on the job, Motorola shall immediately remove that worker from performing services hereunder, and may not employ such worker again hereunder without Customer's prior written consent.

18.4. RIGHT TO AUDIT

Motorola agrees that the representatives of the office of the City Auditor or other authorized representatives of Customer shall have access to, and the right to audit, examine, or reproduce, any and all records of Motorola related to the performance under this Agreement, provided that the Customer's right to audit such books and records are limited to the verification of invoice quantities to shipments and shipment receipts, upon advance notice and during normal business hours. In no event will Customer have right to inspect records or facilities of Motorola or its subcontractors which are deemed confidential or proprietary, including but not limited to data relating to Motorola's costs. Any such audits or inspections shall be at the Customer's expense. Motorola shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit public information requests and litigation matters that Customer has brought to the attention of Motorola are resolved, whichever is longer or as required by law. Motorola agrees to refund to Customer any overpayments disclosed by any such audit. Motorola shall include the foregoing provision in all Subcontractor agreements entered into in connection with this Agreement.

18.5. RIGHT TO ASSURANCE

Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party of written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an Event of Default.

18.6. WORK NOTICE

Customer may issue an immediate Stop Work Notice in the event Motorola is observed performing in a manner that is in violation of Federal, State or local guidelines, or in a manner that is determined by Customer to be unsafe to either life or property. Upon notification, Customer will cease all work until notified by customer that the violation or unsafe condition has been corrected. Motorola will be liable for all costs incurred by Customer as a result of the issuance of the Stop Work Notice.

18.7. CLAIMS

If any claim, demand, suit, or other action is asserted against Motorola which arises under or concerns this Agreement, or which could have a material adverse effect on Motorola's ability to perform hereunder, Motorola shall give written notice thereof to Customer within ten days after receipt of notice by Motorola. Such notice to Customer shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof, and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to Customer and to the Austin City Attorney. Personal delivery to the City Attorney shall be to Norwood Tower, 114 West 7th Street, 5th floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

18.8. FINAL PAYMENT

The making and acceptance of final Payment will constitute:

- 18.8.1. A waiver of all claims by Customer against Motorola, except claims (a) which have been previously asserted in writing and not yet settled, (b) arising from defective work appearing after final inspection, (c) arising from failure of Motorola to comply with the Agreement or the terms of any warranty specified herein, (d) arising from Motorola continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (e) arising under Customer's right to audit; and
- 18.8.2. A waiver of all claims by Motorola against Customer other than those previously asserted in writing and not yet settled and except any claims or counterclaims arising as a result of action taken by Customer as to the excepted claims referenced in the preceding paragraph.

18.9. ADVERTISING

Motorola shall not advertise or publish, without Customer's prior consent, the fact that Customer has entered into the Agreement, except to the extent required by law.

18.10. NO CONTINGENT FEES

Motorola warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by Motorola for the purpose of securing business. For breach or violation of this warranty, Customer shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to Motorola, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

18.11. GRATUITIES

Customer may, by written notice to Motorola, cancel the Agreement without liability if it is determined by Customer that gratuities were offered or given by Motorola or any agent or representative of Motorola to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by Customer pursuant to this provision, Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Motorola in providing such gratuities.

18.12. PROHIBITION AGAINST PERSONAL INTEREST IN AGREEMENT

No officer, employee, independent Consultant, or elected official of Customer who is involved in the development, evaluation, or decision-making process of the performance of the solicitation resulting in this Agreement shall, have a financial interest, direct or indirect, in the Agreement. Any willful violation of this section shall, constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of Motorola shall, render the Agreement voidable by Customer.

18.13. FRAUD

Fraudulent statements by Motorola resulting in this Agreement shall be grounds for the termination of the Agreement for cause by Customer and may result in legal action.

18.14. SHIPMENT UNDER RESERVATION PROHIBITED

Motorola is not authorized to ship the Deliverables under a reservation and no tender of a bill of lading will operate as a tender of Deliverables.

18.15. DELIVERY TERMS AND TRANSPORTATION CHARGES

ALL DELIVERIES WILL BE MADE IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT AS TO TIME OF DELIVERY, QUALITY AND QUANTITY. THE EQUIPMENT WILL BE SHIPPED F.O.B. POINT OF DELIVERY. MOTOROLA'S PRICE INCLUDES ALL DELIVERY AND TRANSPORTATION CHARGES. THE PLACE OF DELIVERY FOR MOBILE, PORTABLE, AND CONTROL STATION EQUIPMENT SHALL BE SET FORTH IN THE PURCHASE ORDER.

18.16. MOTOROLA TO PACKAGE DELIVERABLES

Motorola will package Deliverables in accordance with good commercial practice. Unless otherwise provided in the Statement of Work, each shipping container shall be clearly and permanently marked as follows: (a) Motorola's name and address, (b) Customer's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Motorola shall bear cost of packaging. Deliverables shall be suitably packed to conform with requirements of common carriers and any applicable specifications. Customer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

18.17. RIGHT OF INSPECTION AND REJECTION

Customer expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If Customer has the right to inspect Motorola's, or Motorola's Subcontractor's, facilities, or the Deliverables at Motorola's, or Motorola's Subcontractor's, premises, Motorola shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to Customer to facilitate such inspection.

18.18. COMPLIANCE WITH SAFETY REGULATIONS

Motorola, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules and regulations in the performance of the Services.

18.19. IN ARREARS FOR TAXES

Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §5-1-2 of the Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed the City.

18.20. TRAVEL

All travel and lodging expenses in connection with Services after the Warranty Period for which reimbursement may be claimed by Motorola under the terms of the Agreement will be reviewed against the Current Runzheimer Meal-Lodging Index (the "Index") and the City's Travel Policy. No amounts in excess of the Index and the City's Travel Policy shall be paid. All invoices must be accompanied by copies of receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

18.21. WARRANTY PRICE

Motorola certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

18.22. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, Customer prefers to accept it, Customer may do so. Such acceptance will only be effective if Customer and Motorola agree on the amount of diminution in value to be paid. Customer and Motorola consents to such acceptance. If the parties cannot reach agreement, then they must comply with the other contractual provisions regarding defective or non-conforming deliverables. Motorola shall pay all claims, costs, losses and damages attributable to Customer's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, Customer may deduct such amounts as are necessary to compensate Customer for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to Customer by Motorola.

18.23. RIGHTS TO BID, PROPOSAL, AND CONTRACT MATERIAL

All material submitted by Motorola to Customer, except for any of Motorola's intellectual property rights or other proprietary materials, shall become property of Customer upon receipt. Any portions of such material claimed by Motorola to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

18.24. BONDS

For any specific purchase, Customer may request Motorola to provide a Performance and/or Payment bond, the cost of which will be added to the purchase price.

18.25. HOLIDAYS. THE FOLLOWING HOLIDAYS ARE OBSERVED BY THE CITY:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

SECTION 19 GENERAL**19.1. TAXES**

Purchases of Deliverables for City use are usually exempt from City, State, and most Federal Taxes. Prices should not include exempted taxes. A Tax Exemption Certificate will be provided to Motorola upon request from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under this Agreement.

19.2. CONFIDENTIAL/PROPRIETARY INFORMATION

19.2.1. All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If Motorola does not desire proprietary information to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. If the Motorola fails to identify proprietary information, it agrees that by submission of the information that the material shall be deemed non-proprietary and available upon public request.

19.2.2. Customer will not disclose any material or information identified as Motorola proprietary and confidential to third parties without Motorola's prior written permission, unless Motorola makes such material or information public or disclosure is required by law. If Customer is required by law to disclose such material or

information, Customer will notify Motorola prior to such disclosure. In order to provide the Deliverables to the Customer, Motorola may require access to certain of Customer's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which Customer or its licensors consider confidential) (collectively, "Confidential Information").

- 19.2.3. Each party acknowledges and agrees that the Confidential Information is the valuable property of the other party and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the other party and/or its licensors. Each party (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the other party or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction; provided each party promptly notifies the other party before disclosing such information so as to permit the other party reasonable time to seek an appropriate protective order. Each party agrees to use protective measures no less stringent than that party uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

19.3. DISCLAIMER OF LICENSE

Except as explicitly provided in the Motorola Software License Agreement included in Exhibit A, nothing in this Agreement will be deemed to grant, either directly or by implication, or otherwise, any license or right under any patents, patent applications, copyrights, trademarks, trade secrets or other intellectual property of Motorola.

19.4. ASSIGNABILITY

The Agreement shall be binding upon and inure to the benefit of Customer and Motorola and their respective successors and assigns; provided, however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by Motorola without the prior written consent of Customer. Such consent will not be unreasonably withheld. Any attempted assignment or delegation by Motorola shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement. Subcontracts will be entered into in accordance with the terms of this Agreement. Notwithstanding the foregoing, Motorola may assign its right to receive payments due to Motorola hereunder with the consent of Customer. Customer will not be bound by any such assignment until written notice thereof has been delivered to Customer.

19.5. MODIFICATION

This Agreement can be modified or amended only by written agreement signed by both parties. No preprinted or similar terms on any Motorola invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of this Agreement.

19.6. WAIVER

Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either Motorola or Customer of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

19.7. SURVIVAL OF OBLIGATIONS

All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of this Agreement.

19.8. AGREEMENT DRAFTED BY PARTIES

This Agreement is the result of negotiations between the parties. Accordingly, this Agreement shall be considered to be drafted by both parties and any ambiguities in the Agreement shall not be construed against either party.

19.9. CONSTRUCTION OF WORDS

Where the context so indicates, a word in the singular form shall include the plural, a word in the masculine form shall include the feminine, and vice-versa.

19.10. CAPITALIZED TERMS

Any capitalized terms not defined in the Exhibits will have the meaning as set forth in this Agreement.

19.11. PROJECT MANAGEMENT AND ADMINISTRATION

Responsibility for project management and contract administration for this Agreement shall be as follows:

For the City:

Wireless Comm Services Manager
Chuck Brotherton or successor
Wireless Comm Services Division
1006 Smith Road
Austin, TX 78721

For Motorola:

Account Manager
Attn: Clay Cassard

Contract Administration
Motorola Solutions, Inc.

Contract Administration
City of Austin CTM
Contract Compliance Manager
P. O. Box 1088
Austin, Texas 78767-8828

Attn: Legal Dept, 10th Floor
1303 E. Algonquin Rd
Schaumburg, IL 60196

19.12. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision, which is the essence of the Agreement, be determined to be void.

19.13. HEADINGS AND SECTION REFERENCES

The headings given to the sections of this Agreement are inserted only for reference purposes and are not to be considered in construing this Agreement or as a limitation of the scope of the particular Section to which the heading refers.

19.14. ENTIRE AGREEMENT

This Agreement (including the Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

19.15. INTERPRETATION

The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

19.16. JURISDICTION AND VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A. Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of

another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of Customer to seek and secure injunctive relief from any competent authority as contemplated herein.

19.17. NOTICES

All notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Customer and Motorola shall be addressed as follows:

To the City:

City of Austin
Purchasing Office
Attn: Contract Compliance Manager
P.O. Box 1088
Austin, Texas 78767-8828

with a copy to:
City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

To Motorola:

Motorola Solutions, Inc.
Attn: Clay Cassard
with a copy to:
Motorola Solutions, Inc.
Attn: Legal Dept., 10th Floor
1303 E. Algonquin Rd
Schaumburg, IL 60196

or at such other address, and to the attention of such other person or officer as either person may designate in writing.

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

MOTOROLA SOLUTIONS, INC.

By: [Signature]

Signature

Name: JOHN ZIPAR

Printed Name

Title: CORPORATE VICE PRESIDENT

Date: 8/2/16

CITY OF AUSTIN

By: [Signature]

Signature

Name: JANE T. HOWARD

Printed Name

Title: CORPORATE PURCHASING MANAGER

Date: 8/4/16

APPROVED AS TO FORM: [Signature]

City of Austin Law Department

Date:

List of Exhibits

- Exhibit A Motorola Software License Agreement ("Software License Agreement")
- Exhibit B Technical Exhibits
May include a Statement of Work, Project Schedule, Acceptance Test Plan, System Description, and Equipment List
- Exhibit C Motorola Service Agreement ("Service Agreement")
- Exhibit D Pricing Agreement ("Pricing Agreement"), _____/16
- Exhibit E Interlocal Agreement for the Operation and Maintenance of the Greater Austin-Travis County Regional Radio System ("Interlocal Agreement")
- Exhibit F Change Order Form

EXHIBIT A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and the City of Austin, TX ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

- 1.1. "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.
- 1.2. "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).
- 1.3. "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.4. "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.
- 1.5. "Primary Agreement" means the agreement to which this exhibit is attached.
- 1.6. "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.
- 1.7. "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

Section 3 GRANT OF LICENSE

- 3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.
- 3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

- 4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.
- 4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; provided that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

- 4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.
- 4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.
- 4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

- 6.1. Commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement,

will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

- 6.2. Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.
- 6.3. Warranty claims are described in the Primary Agreement.
- 6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

- 8.1. Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to

use the Software and Documentation may be terminated immediately upon notice by Motorola.

- 8.2. Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.
- 8.3. Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

- 13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.
- 13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.
- 13.3. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.
- 13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.
- 13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.
- 13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.
- 13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.
- 13.8. **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software

can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

EXHIBIT B
TECHNICAL EXHIBITS

(May include a Statement of Work, Project Schedule, Acceptance Test Plan, System Description, and Equipment List)

EXHIBIT C
MOTOROLA SERVICE AGREEMENT
TERMS AND CONDITIONS

Motorola Solutions, Inc. (“Motorola”) and the customer named in this Agreement (“Customer”) hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

- 2.1. “Agreement” means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.
- 2.2. “Equipment” means the equipment that is specified in the attachments or is subsequently added to this Agreement.
- 2.3. “Services” means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the “Start Date” indicated in this Agreement.

Section 4 SCOPE OF SERVICES

- 4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer’s request, Motorola may also provide additional services at Motorola’s then-applicable rates for the services.
- 4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer’s product manuals; and routine service procedures that are prescribed by Motorola will be followed.

- 4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.
- 4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.
- 4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.
- 4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.
- 4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

- 5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- 5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the

price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7 CUSTOMER Contact

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice date.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. **MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Section 10 DEFAULT/TERMINATION

- 10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.
- 10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under

this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

- 12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.
- 12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

- 13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.
- 13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.
- 13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other

intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

- 17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.
- 17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.
- 17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.
- 17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.
- 17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.
- 17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the

necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

- 17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE.
- 17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.
- 17.9. This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

EXHIBIT D

PRICING AGREEMENT

GATRRS Coalition Current and Future Discounts				
				CITY OF AUSTIN CONTRACT DISCOUNT OFF LIST PRICE
Equipment Discounts				
	Repeater Site Equipment - Motorola Products Quantar, LSS, Controllers, Comparators			30%
	Repeater Site Equipment - Non Motorola			20%
	Control Stations and Consolettes			25%
	Mobile Radios			25%
	Portable Radios			25%
	Accessories - Motorola Mobile & Portable			25%
	Accessories - Non-Motorola Mobile & Portable			5%
	Console Equipment - Motorola Products			35%
	Console Equipment - Non-Motorola Products			20%
	Parts - Motorola			15%
	Parts - Non-Motorola			5%
	MOSCAD Equipment			10%
	Data - Fixed Equipment			10%
	Data - User Equipment, including 311, 911, CAD			6%
	Test Equipment			5%
	Purchase Price is based on the Motorola Domestic List Price at the Time of the Actual Purchase Less the Appropriate Discount.			
	LTC and LCS - Not available on the system as configured			
Labor Rates				
	Daily Labor Rate			\$1,600
	Installations, Removals and Programming		5% increase per year	

EXHIBIT E
INTERLOCAL AGREEMENT
(EXECUTED COPY ATTACHED SEPARATELY)

EXHIBIT F CHANGE ORDER FORM

Change Order No. _____
Date: _____
Project Name: _____
Customer Name: _____
Customer Project Mgr: _____

The purpose of this Change Order is to: *(highlight the key reasons for this Change Order)*

Contract # **REQUIRED** _____ **Contract Date:** _____

In accordance with the terms and conditions of the contract identified above between
[\[enter customer name\]](#) and Motorola Solutions, Inc., the following changes are approved:

CONTRACT	PRICE	ADJUSTMENTS
-----------------	--------------	--------------------

Original Contract Value:	\$
Previous Change Order amounts for Change Order numbers 	\$
This Change Order:	\$
New Contract Value:	\$

COMPLETION	DATE	ADJUSTMENTS
-------------------	-------------	--------------------

Original Completion Date:	
Current Completion Date prior to this Change Order:	
New Completion Date:	

Changes in Equipment: *(additions, deletions or modifications)* **Include attachments if needed**

Changes in Services: *(additions, deletions or modifications)* **Include attachments if needed**

Schedule Changes: *(describe change or N/A)*

Pricing Changes: *(describe change or N/A)*

Customer Responsibilities: *(describe change or N/A)*

PAYMENT SCHEDULE FOR THIS CHANGE ORDER:
(DESCRIBE NEW PAYMENT TERMS APPLICABLE TO THIS CHANGE ORDER)

Unless amended above, all other terms and conditions of the Contract shall remain in full force. If there are any inconsistencies between the provisions of this Change Order and the provisions of the Contract, the provisions of this Change Order will prevail.

IN WITNESS WHEREOF the parties have executed this Change Order as of the last date signed below.

**Motorola
Solutions, Inc.**

Customer

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Reviewed by: _____
Motorola Solutions Project Manager

Date: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Motorola Solutions
Austin, TX United States

Certificate Number:
2016-93367

Date Filed:
08/02/2016

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA_6400 NS160000056
Communications Products and Services

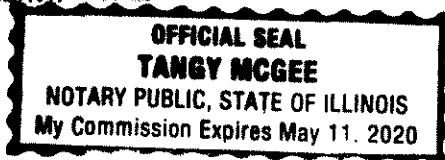
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Tangy McGee

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Tangy McGee, this the 2nd day of August, 2016, to certify which, witness my hand and seal of office.

Tangy McGee

Signature of officer administering oath

Tangy McGee

Printed name of officer administering oath

Notary

Title of officer administering oath

Request for ACM's Signature

What needs to be signed? Please provide a short summary of document.

ACM Washington's signature is requested on a Certificate of Exemption for a sole-source contract with Motorola Solutions, the only authorized vendor for Motorola fixed-network equipment (repeaters, combiners, multicouplers), subscriber equipment (mobile and portable radios), and integrated software and services for the public safety radio system that serves all City departments and non-City agencies served by CTM-Wireless.

Why is the ACM's signature needed?

Contract amount requires Council authorization. The contract period is five years (60 months) with no renewal options. Annual contract amount is estimated at \$10 million with total contract value not to exceed \$50 million over five years.


Do you need this back before the three day requirement? If yes, why?

No.

Who should this form be returned to?

Primary: Lupe Vazquez (CTM);

Secondary: Arletha Guerrero (CTM-Wireless); Jonathan Harris (CTM)

 5/6/2016

Director's Signature Date

All requests should be forwarded from one Single Point of Contact (SPOC) in each department. Requests for signature should be submitted three days prior to needing the document signed. All documents for signature should be submitted in hard copy, with this form attached. Once signed, documents will be scanned and sent back to the department SPOC electronically, as well as the hard copy forwarded back to the department. It is the responsibility of the department to handle the signed document from that point for distribution.

For Assistant City Manager's Office use

_____ Date Received _____ Date Signed _____ Date Returned

REQUEST FOR SIGNATURE

TO: STEPHEN ELKINS
FROM: CHUCK BROTHERTON
DATE: FEBRUARY 1, 2016
SUBJ: **SIGNATURE NEEDED** – MOTOROLA SOLUTIONS SOLE-SOURCE "CERTIFICATE OF EXEMPTION" AND "REQUEST FOR ACM'S SIGNATURE" FORMS

The attached "Certificate of Exemption," for a sole-source contract with Motorola Solutions for capital and non-capital equipment for the regional radio system, requires your and ACM Washington's approval and signature before it is submitted to Purchasing for routing to City Council.

The original Motorola "Communications System Agreement" that built the radio system was awarded through competition and authorized by Council on November 30, 2000. What's now known as the Greater Austin-Travis County Regional Radio System supports four founding coalition partners – City of Austin, Travis County, AISD, and UT-Austin – who shared the cost of the infrastructure and continue sharing operating and capital replacement costs.

The original contract was amended 15 times from 2001 through 2012. Amendment #1, in February 2001, extended the right to purchase equipment off the contract to all "eligible users" of the radio system, including coalition partners and others. The latest amendment, from December 2012, extended the original contract term to December 27, 2020. The main reason for that extension was to allow for completion of a 6-year, \$32 million capital project for life-cycle replacement of radio system infrastructure. That project is currently in its third phase.

In 2012, as part of the recommendation for Council action for the \$32M project, an additional \$10 million in spending authority was requested and approved. Subsequently, we determined that a life-cycle schedule for subscriber equipment was necessary at \$2.37M annually. That combined with unanticipated customer projects (AE's communications backup center relocation, console purchases by Convention Center, Aviation, and others) have resulted in depletion of spending authority more quickly than expected. The estimated need over the next ~~five~~ ^{three} years (\$30 million) exceeds the limit of 25% allowable for amending the original contract, therefore a new contract is required. 3 43

GATRRS infrastructure is proprietary to Motorola. Enhanced features of the system are specific to Motorola and are compatible only with Motorola subscriber equipment (radios, consoles, etc.). Motorola is the sole supplier for products, infrastructure, and services for radio communications equipment that is fully integrated and compatible with this system. Motorola's certified technicians ensure that the equipment and software are maintained and updated to factory specifications.

Requesting an assistant city manager's signature requires completing the attached "Request for Chief of Staff Signature" form. This form also needs your signature before it goes to ACM Washington.

Documents attached to this memo:

- Request for ACM Signature Form (for your signature) and instructions
- Certificate of Exemption Form (for your signature)
- Contract Profile Sheet (with RQM and Magic Ticket Number)
- Vendor Sole Source Letter

Please sign where indicated and let me know when the packet is ready for pick-up. I and my staff are available to address any questions or concerns you might have about this request.

Thank you.

Directions for Completing

FSD Purchasing Office Certification of Exemption Form

(The following steps must be completed prior to forwarding form to Purchasing)

1. Enter date of request in MM/DD/YYYY format
2. Enter Purchasing Buyers name
3. Enter Department requesting exemption
4. Enter Originator of certification
5. Enter phone number of Originator
6. Select one of the exemptions that that apply to this procurement
7. Complete the Exemption Form providing any additional information required for the chosen exemption
8. Enter Vendor's Company Name
9. Enter Total Aggregate Amount
10. Obtain signature of:
 - Person requesting exemption (Originator)
 - Department Director or designee
 - AE General Manager (for Critical Business Needs)
 - Assistant City Manager, AE General Manager or designee (for all other exemptions where the purchase > \$50,000)
11. Forward completed form to Purchasing:
 - Buyer reviews and signs document
 - Purchasing Officer or designee (only required if purchase > \$50,000)



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 02/01/2016

DEPT: CTM - Wireless Office

TO: Purchasing Officer or Designee

FROM: Chuck Brotherton

BUYER: Jim Howard

PHONE: (512) 927-3209

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The Greater Austin-Travis County Regional Radio System (GATRRS) is designed on the APCO Project 25 Phase 1 standard for two-way voice radio communications. "P-25 Phase 1" means that, while subscriber equipment (radios, dispatch consoles, consolettes) that access the system may come from a variety of vendors, the system infrastructure itself - repeaters, antenna systems, combiners, and other hardware and system software - is fully proprietary. Though the original contract was the result of a competitive bid process, the radio system infrastructure that resulted from that process must remain Motorola. The radio subscriber fleet deployed across the City is standardized as Motorola for functionality and reliable operation on the proprietary radio system, and for streamlined and economical programming, maintenance, and repair.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex (valuation of other firms, knowledge of market, etc)).

This contract is for the purchase of capital and non-capital equipment for use on the Greater Austin-Travis County Regional Radio System. The original contract that this contract replaces was awarded through a competitive process and authorized by Council on November 30, 2000. Features of the radio system built under that competed contract are proprietary to Motorola and compatible only with Motorola-certified products and services. Motorola is the sole provider of radio system software, software licenses, patches, and upgrades, as well as remote network monitoring, first-tier maintenance, and other services we rely on for uninterrupted operation of this mission-critical public safety communication system. Subscriber equipment (mobile and portable radios, dispatch consoles, consolettes, mobile repeaters, and other items) is standardized for City public safety and public service departments for functionality and reliable operation on the proprietary radio system, and for streamlined programming, maintenance, and repair. Motorola-certified technicians, including City staff and contractors, ensure that equipment and software are maintained and updated to factory specifications.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Motorola Solutions which will cost approximately ~~\$50,000,000.00~~ 35,000,000 (Provide estimate and/or breakdown of cost).

**Charles C.
Brotherton**

Digitally signed by Charles C. Brotherton
DN: cn=Charles C. Brotherton, o=CTM,
ou=Wireless Communication Services Division,
email=charles.brotherton@austintexas.gov,
c=US
Date: 2016.02.01 13:58:09 -06'00'

Recommended
Certification

Originator

Date

Approved
Certification

Department Director or designee

Date

Assistant City Manager / General Manager
or designee (if applicable)

Date

Purchasing Review
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013



Feb 1 2016

Chuck Brotherton Manager
GATRRS-Wireless Communication Services Division 1006 Smith Rd.
Austin, TX 78721

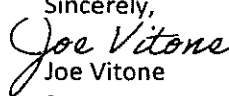
Dear Mr. Brotherton:

Motorola Solutions is the sole source supplier for products, infrastructure, subscriber units, and service for radio communications equipment that is fully integrated and compatible with your Motorola Solutions ASTRO P25 Trunked Radio System. The Greater Austin Travis Regional Radio System is currently serviced by our factory certified technicians.

While P25 is an open air standard allowing disparate radios to communicate via voice, it was written to achieve a base level of interoperability. However, to achieve mission critical public safety communications, Motorola Solutions provides an integrated system with additional enhanced features with unique programming specific only to Motorola Solutions. For instance, the "preferred site roaming, emergency alarm", and "talkgroup patch/merge" programming features are specific, and only compatible with Motorola Solutions products and Motorola Solutions infrastructure. These types of features require complete integration between infrastructure, subscriber units, and software; thus, representing the foundation for our sole source claim.

By utilizing our factory certified technicians to optimize and maintain your regional radio system, Motorola Solutions is uniquely positioned to continue offering the services that allows your system to operate at peak performance without compromising the integrity of availability for your users. These certified technicians ensure that your equipment and software is continually maintained and updated to factory specifications.

Thank you for your continued interest in Motorola Solutions products and services,

Sincerely,

Joe Vitone
System Manager
Motorola Solutions

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER:

PROJECT NAME:

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes _____ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Company Name

Name and Title of Authorized Representative (Print or Type)

Signature

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER:

PROJECT NAME:

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone		Fax Number	
Name of Contact Person			
Is company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER:

PROJECT NAME:

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes ☒ _____ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Motorola Solutions

Company Name

Clay Cassard Senior Account Manager

Name and Title of Authorized Representative (Print or Type)

[Signature]

Signature

6/8/16

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER:

PROJECT NAME:

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Motorola Solutions		
Address	2120 W Braker Lane Suite P		
City, State Zip	Austin TX 78758		
Phone	512.924.3891	Fax Number	
Name of Contact Person	Clay Cessard		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>	

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Clay Cessard Senior Account Manager
Name and Title of Authorized Representative (Print or Type)

G. C. C. C.
Signature

6/8/16
Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	RZ Communications		
City of Austin Certified	MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	VC 0000102824		
Contact Person	Mitchell Ketrick	Phone Number:	512.386.7336
Amount of Subcontract	\$ Estimated BFE 3,500,000.00		
List commodity codes & description of services	Radio Communications & Related Services 725, 7251220, 72514, 72582, 90779		

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____