

SALES AGREEMENT

Between

City of Fort Lauderdale

and

**Motorola Solutions, Inc.
8000 West Sunrise Blvd.
Plantation, FL 33322**

For A

Technology Upgrade P25 Overlay Digital System

Lease Purchase

AGREEMENT

THIS IS AN AGREEMENT, made and entered into this _____ day of _____ 2015, by and between: CITY OF FORT LAUDERDALE, a Florida municipality, (hereinafter referred to as "CITY") and Motorola Solutions, Inc., a Delaware corporation authorized to transact business in the State of Florida, (hereinafter referred to as "CONTRACTOR" or "Motorola" or "Contractor").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, at its meeting of _____, by motion authorized execution of an Agreement between CONTRACTOR and CITY authorizing the performance of work in connection with a Technology Upgrade P25 Overlay Digital System; and

WHEREAS, the CONTRACTOR is willing and able to perform services for such project for the compensation and on the terms hereinafter set forth: and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the parties hereto, do agree as follows:

ARTICLE 1 EXHIBITS, DEFINITIONS AND IDENTIFICATIONS

EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through D will be resolved in their listed order.

- | | |
|-----------|---|
| Exhibit A | Software License Agreement |
| Exhibit B | Motorola's Proposal dated May 13, 2015, amending and including the updated Section 7, Pricing Summary, and excluding Sections 8 and 9 thereof |
| Exhibit C | Service Terms and Conditions |
| Exhibit D | System Acceptance Certificate |

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties. Capitalized terms used in this Agreement have the following meanings:

"Acceptance Tests" means those tests described in the Acceptance Test Plan.

"Additional Services" means services performed by the CONTRACTOR authorized by Change Order and supplemental to the basic services described in this Agreement.

"Agreement" means this document between the CITY and CONTRACTOR dated _____, 2015, and any duly authorized and executed Amendments to Agreement.

"Beneficial Use" means when CITY first uses the System or a Subsystem for operational purposes (excluding training or testing).

“Change Order” means a written order approved by the CITY, authorizing a revision of this Agreement that is directly related to the original scope of work or an adjustment in the original Contract Price or the contract time directly related to the original scope of work, issued on or after the Effective Date.

“Commission” means the CITY Commission of the CITY of Fort Lauderdale, Florida, which is the governing body of the CITY government.

“Confidential Information” means any information that is confidential pursuant to Florida law or exempt from disclosure pursuant to Florida law.

“Contract Administrator” means the Communications Manager of the CITY of Fort Lauderdale, or his or her designee. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

“Contract Price” means the price for the System, excluding applicable sales or similar taxes and freight charges.

“Effective Date” means that date upon which the last Party executes this Agreement.

“Equipment” means the equipment that CITY purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

“Force Majeure” means an event, circumstance, or act of a third party that is beyond a Party’s reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

“Infringement Claim” means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software infringes upon the third party’s United States patent or copyright.

“Motorola Software” means Software that Motorola or its affiliated company owns.

“Non-Motorola Software” means Software that another party owns.

“Open Source Software” (also called “freeware” or “shareware”) means software that has its underlying source code freely available to evaluate, copy, and modify.

“Primary Agreement” means the Agreement to which the exhibits are attached.

“Project” means an agreed scope of work for accomplishing a specific plan or development. The services to be provided by the CONTRACTOR shall be as defined in this agreement and supplemental Change Orders.

“Project Cost” means the total construction cost to CITY of all elements of the Project designed or specified by the CONTRACTOR.

“Project Manager” means the individual or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Project to completion.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party. Trade secrets are defined per Florida law.

“Software” means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.

“Specifications” means the functionality and performance requirements that are described in Exhibit B.

“Statement of Work” means the documents setting forth the final plans and specifications of the Project, including CONTRACTOR responsibilities, CITY responsibilities, Assumptions and Caveats, Cost Quotation and other essentials as may be required, all as approved by CITY as provided in this Agreement

“Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in Exhibit B.

“System” means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in Exhibit B.

“System Acceptance” means the Acceptance Tests have been successfully completed.

“Warranty Period” means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

ARTICLE 2 SCOPE

2.1

2.1 The CONTRACTOR shall perform the following services: As provided and specifically described in Exhibit “B” Motorola’s Proposal dated May 13, 2015, which is attached hereto and made a part hereof. Motorola agrees to complete performance within one (1) year from the latter of the Effective Date of this Agreement, the effective date of the Equipment Lease Purchase Agreement, and receipt by Motorola of the City’s Purchase Order, excluding Customer delays or events of Force Majeure.

2.2

CITY and CONTRACTOR acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONTRACTOR to complete the Project. If, during the course of the performance of the services included in this Agreement, CONTRACTOR determines that work should be performed to complete the Project which is in the CONTRACTOR’s opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONTRACTOR shall notify Contract Administrator and obtain written approval by the CITY in a timely manner before proceeding with the work. If CONTRACTOR proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval

by CITY to perform the work. Performance of work by CONTRACTOR outside the originally anticipated level of effort without prior written CITY approval is at CONTRACTOR's sole risk.

2.3. TERM. Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Warranty Period.

2.4. APPROVAL OF CHANGE ORDERS

Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will negotiate an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written Change Order. A Change Order will not be required for changes made pursuant to Section 3.7 of the Service Agreement.

2.5. ADDITIONAL EQUIPMENT OR SOFTWARE. For three (3) years after the Effective Date, CITY may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at delivery, warranty will commence upon delivery, and payment is due within forty-five (45) days after the invoice date. Motorola will send CITY an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, CITY may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

2.6. MAINTENANCE SERVICE. During the Warranty Period, and for six (6) years after the Warranty Period for the infrastructure Equipment, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to this Agreement. Those services and support are included in the Contract Price. CITY shall pay for each year's maintenance services annually, at the beginning of each maintenance period. If CITY wishes to purchase additional maintenance and support services for the Equipment after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If CITY wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to the maintenance, support or software subscription services will be per Exhibits B and C, together with the appropriate statements of work.

- 2.7. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to CITY solely in accordance with the Software License Agreement. CITY hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.
- 2.8. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to CITY in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to CITY in accordance with, and CITY agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by CITY, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to CITY a copy of the applicable standard license (or specify where that license may be found); and provide to CITY a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).
- 2.9. SUBSTITUTIONS. At no additional cost to CITY, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the CITY. Any substitution will be reflected in a Change Order.

ARTICLE 3 SYSTEM ACCEPTANCE

- 3.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to CITY at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.
- 3.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If CITY believes the System has failed the completed Acceptance Tests, CITY will provide to Motorola a written notice that includes the specific details of the failure. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.
- 3.3. BENEFICIAL USE. CITY acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if CITY begins using the System before System Acceptance. Therefore, CITY will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not

be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, CITY assumes responsibility for the use and operation of the System.

- 3.4 FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

- 4.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or CITY changes to load usage or configuration outside the Specifications.
- 4.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.
- 4.3. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software.
- 4.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; CITY's failure to comply with all applicable industry standards and applicable State of Florida workplace safety laws (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot (not applicable for Motorola-owned equipment); (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.
- 4.5. WARRANTY CLAIMS. To assert a warranty claim, CITY must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to CITY) repair the defective Equipment or Motorola Software, replace it with the same or equivalent

product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice CITY for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. To the extent provided by applicable CITY of Fort Lauderdale ordinance, all replaced products or parts will become the property of Motorola.

- 4.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.
- 4.7. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. TO THE EXTENT ALLOWED BY LAW, MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 5 TIME FOR PERFORMANCE; CONTRACTOR DAMAGES

- 5.1 CONTRACTOR shall perform the services described herein within the specified, mutually agreed upon project schedule, developed before commencement of work and made a part of this Agreement. The Project Schedule, once complete, shall be automatically incorporated into this Agreement; said time periods shall commence from the Effective Date.
- 5.2 In the event CONTRACTOR is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONTRACTOR, or because of delays which were caused by factors outside the control of CONTRACTOR ("Force Majeure"), CITY shall grant a reasonable extension of time for completion of the services and may provide reasonable compensation, if appropriate. It shall be the responsibility of the CONTRACTOR to notify CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 5.3 PAYMENT AND PERFORMANCE BONDS

5.3.1. CONTRACTOR shall within (30) working days after execution of this Agreement by both parties, at CONTRACTOR's expense, furnish to the CITY a Payment and Performance Bonds, in the amount of \$2,308,690 as surety for faithful performance under the terms and conditions of the Agreement. If the bonds are on an annual coverage basis, renewal for each succeeding year shall be submitted to the CITY thirty (30) days prior to the termination date of the existing Payment and Performance Bonds. The Payment and Performance Bonds must be executed by a surety company of recognized standing and authorized to transact business and issue payment and performance bonds in the State of Florida, and having a resident agent.

5.3.2. The surety company must have a Financial Size Categories (FSC) rating of no less than "A-" by the latest edition of Best's Key Rating Guide, hold a valid Florida Certificate of Authority issued by the State of Florida Office of Insurance Regulation, and be a member of the Florida Guarantee Fund.

5.3.3. Acknowledgement and agreement is given by both parties that the amount herein set for the Payment and Performance Bonds are not intended to be, nor shall they be deemed to be in the nature of liquidated damages nor are they intended to limit the liability of the Contractor to the CITY in the event of a material breach of this Agreement by the Contractor.

ARTICLE 6
COMPENSATION AND METHOD OF PAYMENT

6.1 AMOUNT AND METHOD OF COMPENSATION

6.1.1 CONTRACT PRICE

CITY agrees to pay CONTRACTOR as compensation for performance of all Equipment and services required under the terms of this Agreement, Four Million Nineteen Thousand Four Hundred Forty-Seven Dollars and Fourteen Cents (\$4,019,447.14) (the "Contract Price").

6.2 METHOD OF PAYMENT

6.2.1. The Contract Price will be paid as follows:

\$17,312.00 due within thirty (30) days following the CITY's receipt of a proper invoice issued after the Effective Date;

\$2,308,690 will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease-Purchase Agreement No. 23702, executed between the parties; and

\$1,693,445.14 is the balance of the Contract Price for post warranty maintenance services and will be paid via annual payments, due and payable at the beginning of each annual maintenance period.

For CITY's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. Motorola will pre-pay and add all freight charges to the invoices.

6.2.2. TITLE, AND RISK OF LOSS; INVOICING AND SHIPPING. Motorola will pre-pay and add all freight charges to the invoices. Unless otherwise stated in Equipment Lease-Purchase Agreement, title and risk of loss to the Equipment will pass to CITY upon delivery to CITY. Title to Software will not pass to CITY at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.2.3. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the CITY at the following address: Attn: Accounts Payable 100 N. Andrews Ave., Fort Lauderdale, FL 33301. The Equipment will be shipped to the ultimate address:

1300 W. Broward Blvd. Fort Lauderdale, FL 33312;
949 NW 38th St. Fort Lauderdale, FL 33309; and
350 Galt Ocean Dr. Fort Lauderdale, FL 33308.

The CITY may change this information by giving written notice to Motorola.

6.2.4. TAXES. The CITY of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

ARTICLE 7
ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

- 7.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, prior to any deviation from the terms of this Agreement including the initiation of any Additional Services. CITY shall compensate CONTRACTOR for such Additional Services as provided in Article 3.4 or as set forth in writing in a Change Order signed by both parties.
- 7.2 In the event a dispute between the Contract Administrator and CONTRACTOR arises over whether requested services constitute Additional Services and such dispute cannot be resolved by the Contract Administrator and CONTRACTOR, such dispute shall be promptly presented to the Contract Administrator's Department Director for resolution. The Director's decision shall be final and binding on the parties, subject to judicial review. Any resolution in favor of CONTRACTOR shall be set forth in a written document in accordance with Section 7.1 above. During the pendency of any dispute, CONTRACTOR shall promptly perform the undisputed services and the CITY shall pay CONTRACTOR per Article 6.

ARTICLE 8
CITY'S RESPONSIBILITIES

- 8.1 CITY shall assist CONTRACTOR by placing at CONTRACTOR's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project site.
- 8.2 CITY shall arrange for access to, and make all provisions for, CONTRACTOR to enter upon public and private property as required for CONTRACTOR to perform its services. CONTRACTOR shall adhere to CITY's security policies and procedures for access to CITY facilities. Private property access will be governed by the property owner's policies and procedures. All personnel requesting access to the Police Department site shall provide personal identifying information in order to allow the Department to perform a security background check.
- 8.3 CITY shall review the itemized deliverables/documents identified in this Agreement.
- 8.4 CITY shall give prompt written notice to CONTRACTOR whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of

CONTRACTOR's services or any defect in the work of the Contractor.

ARTICLE 9
MISCELLANEOUS

9.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by CONTRACTOR solely for the CITY pursuant to this Agreement, and which are not deemed by Motorola to be its proprietary or intellectual property, or trade secret pursuant to Florida law, shall be owned by the CITY.

9.2 TERMINATION

9.2.1 If the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the CITY may upon thirty (30) days written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the CITY by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the CITY, become the CITY's property and the Contractor shall be entitled to receive equitable compensation for any work completed. The Contractor, however, shall not be relieved of liability to the CITY for reasonable damages directly sustained by the CITY by reason of any breach of the Agreement by the Contractor, and the CITY may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the CITY from the Contractor can be determined. If the CITY is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, the CITY may recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement .

9.2.2 This Agreement may also be terminated by CITY upon such notice, as CITY deems appropriate under the circumstances in the event CITY determines that termination is necessary to protect the public health, safety, or welfare of the public.

9.2.3 CANCELLATION FOR UNAPPROPRIATED FUNDS: The obligation of the CITY for payment to Contractor is limited to the availability of funds appropriated in a current fiscal period, and evidenced as available by signature of the CITY below, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

9.2.4 Notice of termination shall be provided in accordance with Section 9.26, NOTICES, except that Contract Administrator may provide a verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 10.15, NOTICES.

9.2.5 In the event this Agreement is terminated for non-appropriation, CONTRACTOR shall be paid for any products and services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 9.3

of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services that have not been performed.

9.3 AUDIT RIGHT AND RETENTION OF RECORDS

9.3.1. CITY shall have the right to audit the books, records, and accounts of CONTRACTOR that are related to this Project. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

9.3.2. CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry. Motorola will verify the accuracy of its invoices; however, Motorola will not be required to disclose its confidential and proprietary raw costs or pricing data from which Customer's fixed pricing is determined by Motorola.

9.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

9.4.1. CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

9.4.2. CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

9.4.3. CONTRACTOR shall comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONTRACTOR shall take affirmative steps to ensure

nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

9.4.4. CONTRACTOR shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

9.5 PUBLIC ENTITY CRIMES ACT

9.5.1. CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, contractor or other provider and who has been placed on the convicted vendor list following a conviction for a “public entity crime”, as defined by Section 287.133, Florida Statutes, may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or contractor under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY’s competitive procurement activities.

9.5.2. In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONTRACTOR has been placed on the convicted vendor list.

9.6 SUBCONTRACTORS

9.6.1. CONTRACTOR may subcontract certain items of work to a subcontractor. The parties expressly agree that the CONTRACTOR shall submit pertinent information regarding the proposed subcontractor, including subcontractor’s scope of work, for review and approval by the CITY prior to sub-contractors proceeding with any work.

9.6.2. CONTRACTOR may utilize the subcontractors identified below to provide the services for this Project. CONTRACTOR shall obtain written approval of Contract Administrator prior to changing or modifying the list of subcontractors submitted by CONTRACTOR. Written approval or disapproval will be within ten (10) business days, and may not be unreasonably withheld, but which approval the CITY may revoke at any time for cause. The list of subcontractors submitted is as follows:

1. Control Communications Inc. - 3650 Hacienda Blvd. Suite C, Davie, Florida 33314
2. Weezer Electric, Inc. - 271 NW 16th Street, Pompano Beach, Florida 33060

9.6.3. CONTRACTOR shall ensure that all of CONTRACTOR's subcontractors perform in accordance with the terms and conditions of this Agreement. CONTRACTOR shall be fully responsible for all of CONTRACTOR's subcontractors' performance, and liable for any of CONTRACTOR's subcontractors' non-performance and all of CONTRACTOR's subcontractors' negligent acts and omissions. CONTRACTOR shall defend at CONTRACTOR's expense, and indemnify and hold the CITY and the CITY's officers and employees harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors, their subcontractors' officers, agents or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to the CITY's prior written approval, which approval the CITY may revoke at any time for cause. The CITY's approval shall not be unreasonably withheld.

9.7 ASSIGNMENT AND PERFORMANCE

9.7.1. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the CITY, and CONTRACTOR shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 9.6, SUBCONTRACTORS.

9.7.2. The monies, which may become due hereunder, are not assignable except with the proper written approval of the CITY Commission or the CITY Manager or CITY Manager's designee.

9.7.3. CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY for the agreed compensation.

9.7.4. CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national professional standards.

9.8 INDEMNIFICATION TO CITY

9.8.1 INDEMNITY/HOLD HARMLESS AGREEMENT: The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the CITY and its officers and employees from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities, including reasonable attorneys fees, in connection with or arising directly out of the work agreed to or performed by CONTRACTOR under the terms of this Agreement. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to tangible property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of

any court shall be included in the indemnity hereunder.

9.8.2 PATENTS AND ROYALTIES:

9.8.2.1. Motorola will defend at its expense any suit brought against CITY to the extent it is based on an Infringement Claim, and Motorola will indemnify CITY for those costs and damages finally awarded against CITY for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: CITY promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and CITY providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

9.8.2.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for CITY the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant CITY a credit for the Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Motorola Software.

9.8.2.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with CITY's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by CITY to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to CITY extend in any way to royalties payable on a per use basis or the CITY's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from CITY from sales or license of the infringing Motorola Product, if applicable.

9.8.2.4. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the prices shall include all royalties or costs arising from the use of such design, device, or materials involved in the work by Motorola.

9.9 LIMITATION OF LIABILITY

Except for personal injury, death or damage to tangible property, 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 price of the Equipment, Software, or services with respect to which losses or damages are claimed. **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, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. An action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought within the time provided for by Florida law.

ARTICLE 10
INSURANCE

CONTRACTOR shall furnish to CITY of Fort Lauderdale, c/o Department of Risk Management Services, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, an ACORD Certificate(s) of Insurance upon the Effective Date which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

10.1. COMMERCIAL GENERAL LIABILITY

A. Limits of Liability

Bodily Injury and Property Combined Single Limit	
Each Occurrence	\$1,000,000
General Policy Aggregate	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000

B. Additional Coverage Requirements

City of Fort Lauderdale included as an Additional Insured
Contractual Liability
Premises/ Operations

10.2. BUSINESS AUTOMOBILE LIABILITY

Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$1,000,000

10.3 WORKER'S COMPENSATION

Limits of Liability
Statutory-State of Florida

10.4 The CITY is required to be included as additional insured on the Commercial

General Liability Policy. **BINDERS ARE UNACCEPTABLE.** The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONTRACTOR.

10.5 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

10.6 The Company must be rated no less than "A-" as to financial strength, and no less than "Class VIII" as to financial size, by the latest edition of Best's Key Rating Insurance Guide which holds a valid Florida Certificate of Authority issued by the State of Florida, Office of Insurance Regulation, and are members of the Florida Guarantee Fund.

10.7 CONTRACTOR agrees that no cancellation of insurance for any reason shall be made without thirty (30) days written advance notice to the certificate holder.

10.8. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligation under this section or under any other section of this Agreement.

10.9. The CONTRACTOR shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONTRACTOR shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of five (5) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the CITY shall:

- A) Suspend the Agreement until such time as the new or renewed certificates are received by the CITY.
- B) The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONTRACTOR in conjunction with the violation of the terms and conditions of the Agreement.

10.10 CONTRACTOR shall require all of its subcontractors to provide the aforementioned coverage.

ARTICLE 11 REPRESENTATIVE OF CITY AND CONTRACTOR

11.1. CONTRACT ADMINISTRATOR

11.1.1. Contract Administrator, or his or her designee, is the CITY's representative regarding this Agreement. The parties, however, recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONTRACTOR's request, may advise CONTRACTOR in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.1.2 CONTRACTOR shall inform the Contract Administrator in writing of

CONTRACTOR's representative to whom matters involving the conduct of the Project shall be addressed.

11.2 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

11.3 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR shall be subject to the supervision of CONTRACTOR. In providing the services, neither CONTRACTOR nor its agents shall be acting nor shall any of them be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.4 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, without prior written approval by both parties to this Agreement.

11.5 CONFLICTS

11.5.1. Neither CONTRACTOR nor its employees shall have or currently hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement.

11.5.2. CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding.

11.5.3. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

11.5.4. In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts with CITY as within the meaning of this section.

11.6 WAIVER OF BREACH AND MATERIALITY

11.6.1. Failure by CITY or CONTRACTOR to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

11.6.2. CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.7 COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.8 ASBESTOS STATEMENT

All material supplied must be 100% asbestos free. CONTRACTOR certifies that CONTRACTOR will supply only material or equipment that is 100% asbestos free.

11.9 SEVERABILITY

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

11.10 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.11 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-10 of this Agreement shall prevail and be given effect.

11.12 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this agreement and for any other legal proceeding shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern

District of Florida.

11.13 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.14 TWO ORIGINAL AGREEMENTS

This Agreement shall be executed in duplicate, with each one treated as an original.

11.15 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY: Lee Feldman, City Manager
City of Fort Lauderdale
100 N. Andrews Avenue, Floor 7
Fort Lauderdale, Florida 33301
L.Feldman@fortlauderdale.gov
Telephone: (954) 828-5959

CONTRACTOR:

Motorola Solutions, Inc.
8000 West Sunrise Blvd.
Plantation, FL 33322
Attn: Mitch Nowak

With a copy to:

Troy Bailey Communication Manager
City of Fort Lauderdale Communications Shop
100 N. Andrews Ave.
Fort Lauderdale, FL 33301
Telephone: (954) 828-5790

and

Judy Jean-Pierre, Sr. Commercial Attorney
Legal, Government Affairs & Corporate Communications
Motorola Solutions, Inc.
1303 E. Algonquin Road, IL01, 10th Floor
Schaumburg, IL 60196

11.16 ATTORNEY FEES

If CITY or CONTRACTOR incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation may recover all such reasonable costs and expenses, including but not limited to, court costs and reasonable attorney fees incurred during litigation.

11.17 PERMITS, LICENSES AND TAXES

11.17.1 CONTRACTOR shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONTRACTOR is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. The CITY will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola will assist CITY in the preparation of its FCC license applications and Region 9 Florida Region Interference Plan (FRIP) documentation, neither Motorola nor any of its employees is an agent or representative of CITY in FCC or other matters.

11.17.2. Any change in tax laws after the execution of this Agreement may subject this Agreement to further negotiation and CONTRACTOR shall be responsible for complying with all state tax requirements.

11.18 EVALUATION

The CITY maintains the right to periodically review the performance of the CONTRACTOR regarding the Scope of Services, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONTRACTOR to utilize Minority-owned Business Enterprise (MBE)/Women-owned Business Enterprise (WBE) participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the Contractor to address and remedy such deficiencies.

11.19 STATUTORY COMPLIANCE

CONTRACTOR shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, Florida, the CITY of Fort Lauderdale, Florida, and all governmental agencies having jurisdiction over the services to be provided by CONTRACTOR under this Agreement or over any aspect or phase of the Project.

11.20 CONFIDENTIALITY

Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who, in the recipient employer's opinion, have a "need to know", and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information that it is confidential and is not to be disclosed to others, but these

precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use of such Confidential Information only in furtherance of the performance of this Agreement. Except as otherwise provided by Florida law, Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Notwithstanding the foregoing, CONTRACTOR acknowledges that the CITY is subject to the Florida public records law. Except for Software Documentation that is specifically marked Confidential, Proprietary or Trade Secret that is trade secret pursuant to Florida law, absent an applicable exemption, all records made or received by the CITY in connection with this Agreement are public records open for inspection and copying at any reasonable time.

11.21 AUTHORITY TO EXECUTE AGREEMENT

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

11.21.2. The Parties hereby enter into this Agreement as of the Effective Date. This Agreement may be executed by each of the Parties hereto in separate counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. 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.

11.22. SCRUTINIZED COMPANIES.

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. The CITY may terminate this Agreement at the CITY's option if Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2014), as may be amended or revised.

11.23. PUBLIC RECORDS.

Notwithstanding any other provision contained in this Agreement, CONTRACTOR shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seal the day and year first written above.

CITY OF FORT LAUDERDALE:

John P. "Jack" Seiler, Mayor

ATTEST:

Jonda Joseph, City Clerk

Lee Feldman, City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

MOTOROLA SOLUTIONS, INC.:

Print Name:

By: _____
Robert Marshall

Print Name:

MSSSI Vice President/Director of Sales

(Corporate Seal)

ATTEST:

Judith Jean-Pierre
Assistant Secretary

STATE OF GEORGIA:
COUNTY OF GWINNETH:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Robert Marshall as MSSSI Vice President and Director of Sales for Motorola Solutions, Inc., a Delaware corporation authorized to transact business in the State of Florida.

Notary Public, State of Georgia
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name
of Notary Public)

Personally Known OR Produced Identification _____

Type of Identification Produced: _____

Exhibit A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola") and the City of Fort Lauderdale, FL ("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 "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.

1.6 "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 or governmental 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. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's delivery of the Software to the Licensee (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 its rights to use 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, subject to applicable Florida law and regulations, 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 except as otherwise provided by Florida law all copies of the Software have been removed or deleted from the Designated Products and that, except as otherwise provided by Florida law, 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 seek 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 as defined in the Primary Agreement.

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 Software License 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 of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. 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

Motorola's Proposal dated May 13, 2015

Motorola Solutions, Inc.
8000 W Sunrise Blvd.
Plantation, FL 33322
USA

Telephone: +1 954-789-8817
Fax: +1 847-761-1919

13 May 2015

Mike Maier
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Subject: Public Safety Communications Life Cycle Upgrade

Dear Mr. Maier:

Motorola Solutions, Inc. (Motorola) is pleased to have the opportunity to provide the City of Fort Lauderdale (City) with quality communications equipment and services. The Motorola project team has taken great care to propose a solution that will meet your needs and provide unsurpassed value.

To best meet the functional and operational requests the City has regarding the City's public safety user's communication, Motorola's solution includes a combination of hardware, software, and services. Motorola has proposed the following (detailed in our proposal):

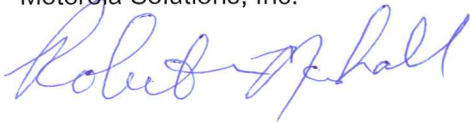
- 3-site FDMA, P25, simulcast, 12-channel upgrade.
- Radio software flash upgrades to utilize the City's current radio inventory.
- Warranty and maintenance for the upgraded system for 5 years.
- Continued operation of the SmartX SmartZone system for local government.
- Maintenance for subscribers, MERS trailer, microwave backhaul and fire house alerting for 4 years.
- Both systems will both be connected to the Motorola South Florida Hosted Master Site, allowing continued interoperability with other agencies within the County.

The City may accept this proposal by delivering the signed communication agreement contracts within this proposal. The term of this contract is 5 years. Motorola would be pleased to address any concerns the City may have regarding the proposal. Any questions can be directed to your Motorola Account Executive, Mitch Nowak, at 954-789-8817. This contract will be thirty days from the date on this cover letter.

We thank you for the opportunity to furnish the City of Fort Lauderdale with "best in class" solutions and we hope to strengthen our relationship by implementing this project. Our goal is to provide you with the best products and services available in the communications industry.

Sincerely,

Motorola Solutions, Inc.



Robert E. Marshall Jr.
MSSSI Vice President

Exhibit C
Service Terms and Conditions

The Service Terms and Conditions from the existing Service Agreement Nos. S00001021096 and S00001002125 (the "Service Agreements"), including the applicable Statements of Work, for maintenance are hereby fully incorporated into this Agreement. Upon execution of the Primary Agreement and at the end of the Warranty Period in the Primary Agreement:

- 1) these two Service Agreements will be merged into one Service Agreement, i.e., Service Agreement No. S00001002125;
- 2) the new Equipment furnished under the Primary Agreement will be added to S00001002125; and
- 3) the payment terms for post warranty maintenance will be as follows:

Section 1 PAYMENT TERMS

Unless alternative payment terms are stated in this Agreement, Motorola will invoice CITY in advance for each annual payment period. All other charges will be billed monthly, and CITY must pay each invoice in U.S. dollars within forty-five (45) days of the invoice date. CITY will reimburse Motorola for any applicable property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 2 RECORD MANAGEMENT

Notwithstanding any other provision contained in this Agreement, Motorola shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

Except as set forth in this Exhibit C, all other terms and conditions in the existing Service Agreement Nos. S00001021096 and S00001002125 remain unchanged.

Exhibit D
System Acceptance Certificate

CITY Name: _____

Project Name: _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and CITY acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

CITY Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and CITY has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

CITY Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____