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1. Master agreement  
1997

**CITYWIDE 800 MHZ RADIO SYSTEM PROJECT AGREEMENT**  
**BY AND BETWEEN**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**AND**  
**MOTOROLA, INC.**

Dated: September 22, 1997

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	2
Section 1.01. Definitions.....	2
ARTICLE 2 TERM .....	8
Section 2.01. Term of Master Agreement .....	8
Section 2.02. Termination .....	9
ARTICLE 3 THE PROJECT .....	10
Section 3.01. Equipment, Labor and Services .....	10
Section 3.02. City's Responsibilities.....	11
Section 3.03. The Project and the Optional Phases.....	12
Section 3.04. State of the Art .....	17
ARTICLE 4 PRICING AND PAYMENT .....	17
Section 4.01. Project Price .....	17
Section 4.02. Price of Additional Equipment.....	19
Section 4.03. Labor Costs .....	20
Section 4.04. Wages and Payrolls.....	21
Section 4.05. Schedule of Payments .....	24
Section 4.06. Invoices .....	25
Section 4.07. Payment Authorization .....	26
Section 4.08. Withholding Payment.....	27
Section 4.09. Budget and Fiscal Provisions .....	27

	<u>Page</u>
Section 4.10 Appropriation .....	28
Section 4.11. Guaranteed Maximum Costs .....	28
Section 4.12. Audit and Inspection of Records .....	29
ARTICLE 5 MASTER PROJECT SCHEDULE.....	29
Section 5.01. Master Project Schedule .....	29
Section 5.02. City's Right to Perform Work .....	30
Section 5.03. Delays .....	30
ARTICLE 6 DESIGN, COMMENCEMENT AND INSTALLATION OF PROJECT.....	32
Section 6.01. Design and Work Documents .....	32
Section 6.02. Clarification.....	34
Section 6.03. Change Orders.....	34
Section 6.04. Project Managers; Meetings; and Reports.....	35
Section 6.05. Conditions to Commencement of Project .....	37
Section 6.06. Staging and Preparation.....	37
Section 6.07. Sites.....	38
Section 6.08. Security .....	39
Section 6.09. Deliveries.....	39
Section 6.10. Emergency Work.....	40
Section 6.11. Existing Systems and Equipment.....	40
Section 6.12. Subcontractors .....	41
Section 6.13. Cooperation and Coordination with Other Work.....	42
Section 6.14. Conduct of Parties .....	42

	<u>Page</u>
Section 6.15. Barricades, Warning Signs and Lighting.....	42
Section 6.16. Independent Contractor; Payment of Taxes and Other Expenses.....	42
ARTICLE 7 INSPECTIONS, TESTING, AND ACCEPTANCE .....	43
Section 7.01. Acceptance Test Plans and Inspections.....	43
Section 7.02. Performance Test Procedure and Inspection .....	44
Section 7.03. Reliability Period.....	45
Section 7.04. Equipment or Work That Complies With Statement of Work and Services But Fails to Meet the Performance Specifications or the Acceptance Test Plans.....	46
ARTICLE 8 PERFORMANCE, LABOR AND MATERIAL BOND .....	46
Section 8.01. Security for Performance and Payment .....	46
ARTICLE 9 INSURANCE .....	47
Section 9.01. Insurance .....	47
Section 9.02. Claims Made Coverage .....	48
Section 9.03. Certificates of Insurance .....	48
Section 9.04. Cancellation or Lapse of Insurance .....	49
Section 9.05. Other Insurance Requirements.....	49
Section 9.06. Subcontractors .....	49
ARTICLE 10 INDEMNIFICATION.....	49
Section 10.01. General Indemnity .....	49
Section 10.02. Indemnity re Copyright, Patent, Trademark, Infringement.....	50
ARTICLE 11 SOFTWARE.....	50
Section 11.01. Licenses.....	50

Section 11.02. No Additional Payments ..... 50

Section 11.03. Warranties ..... 51

Section 11.04. Source Code..... 51

Section 11.05. Other Codes..... 51

Section 11.06. Assignable ..... 51

Section 11.07. Conflicting Provisions..... 52

Section 11.08. Disclaimer of Patent License..... 52

Section 11.09. 2000 Compliant..... 52

ARTICLE 12 TRAINING AND SUPPORT..... 52

    Section 12.01. Training..... 52

ARTICLE 13 DOCUMENTATION FOR PROJECT..... 53

    Section 13.01. Delivery of Documentation..... 53

ARTICLE 14 PARTS, MAINTENANCE AND REPAIRS..... 54

    Section 14.01. Replacement Parts..... 54

    Section 14.02. Maintenance and Repairs ..... 55

ARTICLE 15 REPRESENTATIONS AND WARRANTIES..... 57

    Section 15.01. General Representations ..... 57

    Section 15.02. Basic Warranties ..... 57

    Section 15.03. Software Representations and Warranties ..... 59

    Section 15.04. Assignment of Manufacturer's Warranties ..... 59

ARTICLE 16 EVENTS OF DEFAULT; REMEDIES..... 60

    Section 16.01. Events of Default..... 60

	<u>Page</u>
Section 16.02. Remedies .....	60
Section 16.03. Contractor/Limitation of Liability .....	61
Section 16.04. City/Limitation of Liability .....	61
ARTICLE 17 ARBITRATION .....	62
Section 17.01. Arbitration.....	62
ARTICLE 18 GENERAL PROVISIONS .....	62
Section 18.01. Assignment.....	62
Section 18.02. Required Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Local Business Enterprise (LBE) .....	63
Section 18.03. Equal Opportunity Employment and Business Practices; Liquidated Damages .....	63
Section 18.04. Prohibited Interests .....	64
Section 18.05. Waiver .....	64
Section 18.06. Notices .....	64
Section 18.07. City Acting in Proprietary Capacity Only .....	65
Section 18.08. Evidence of Compliance .....	66
Section 18.09. Time of the Essence .....	66
Section 18.10. Consent .....	66
Section 18.11. MacBride Principles--Northern Ireland .....	66
Section 18.12. Tropical Hardwood Ban .....	66
Section 18.13. Video Data Terminal Ordinance.....	66
Section 18.14. Drug Free Work Place .....	66
Section 18.15. Compliance With Americans With Disabilities Act.....	67

	<u>Page</u>
Section 18.16. Burma (Myanmar) Business Prohibition .....	67
Section 18.17. Captions.....	67
Section 18.18. Entire Agreement .....	67
Section 18.19. Conflicts and Inconsistency .....	68
Section 18.20. Governing Law .....	68
Section 18.21. Jurisdiction and Venue .....	68
Section 18.22. Interpretation.....	68
Section 18.23. Master Agreement Drafted by All Parties .....	68
Section 18.24. Severability.....	69
Section 18.25. Meaning of Certain Phrases.....	69
Section 18.26. Counterparts .....	69
Section 18.27. Public Disclosure Laws .....	69



## EXHIBITS

Exhibit A	Performance Specifications
Exhibit B	Statement of Work and Services
Exhibit C	Project User Equipment List
Exhibit D	Project Cost Itemization Schedule
Exhibit E	Master Project Schedule
Exhibit F	General Acceptance Test Plan
Exhibit G	Additional Equipment Price Schedule
Exhibit H	Labor Rate Schedule
Exhibit I	Form of Request to Commence
Exhibit J	Form of Software License
Exhibit K	Form of Escrow Agreement
Exhibit L	Project Training
Exhibit M	Equal Benefits Exception



## CITYWIDE 800 MHZ RADIO SYSTEM PROJECT AGREEMENT

THIS CITYWIDE 800 MHZ RADIO SYSTEM PROJECT AGREEMENT, dated as of September 22, 1997 ("Master Agreement"), is by and between MOTOROLA, INC., a Delaware corporation ("Contractor") and CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES ("DTIS").

### BACKGROUND

A. The City has an existing trunking radio system used by the City's Public Works and other City departments and agencies; and

B. City desires to upgrade and expand the existing 800 MHz trunking radio system by the acquisition and installation of a citywide 800 MHz trunking radio communication system, all of which would be combined into a seamless trunking radio communication system for the City; and

C. On May 2, 1996, the City issued an Invitation for Bids ("IFB") seeking a contractor to provide the proposed project; and

D. The IFB was a multi-step process, consisting of the following steps: (1) prequalification of the bidder, (2) submission of technical proposal and (3) submission of cost proposals; and

E. In connection with the first step of the bid process, only two bidders submitted prequalification statements; and

F. These two bidders advanced to the second step of the process; and

G. In connection with the second step of the bid process, the Contractor was the only bidder to submit a technical proposal; the other bidder informed the City that it did not wish to bid on the project; and

H. With the submission of one bid, the Purchaser recommended termination of the bid process and commencement of direct negotiations with the Contractor; and

I. Upon this recommendation, the bid process was terminated and the Board of Supervisors was so informed; and

J. The parties desire to enter into an agreement memorializing the terms and conditions for the acquisition, installation and delivery of the proposed project and the optional acquisition of certain additional equipment; and

K. Now, in consideration of the mutual covenants and promises set forth herein, it is agreed by the parties as follows:

## AGREEMENT

### ARTICLE 1

#### DEFINITIONS

**Section 1.01. Definitions.** Unless the context clearly otherwise requires, all terms used in this Master Agreement shall have the meanings specified in this Section, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Words of any gender shall be deemed and construed to include all genders.

"ACCEPTANCE TEST PLAN" means the final, detailed testing plan by which the City and Contractor will test, via a live operational demonstration, all components of the Project, individually and collectively, to ensure that it works according to the Statement of Work and Services (including all published specifications) and meets or exceeds all the Performance Specifications.

"ADDITIONAL EQUIPMENT" shall have the meaning given such term in Section 4.02 hereof.

"ADDITIONAL EQUIPMENT PRICE SCHEDULE" means the schedule of Equipment prices for all the Equipment available for purchase by the City for the Project, attached hereto as Exhibit G.

"AFFILIATED PARTY" means any person or entity which directly or indirectly, through one of more intermediaries, controls, is controlled by or is under the common control with Contractor. As used above, the term "control" means the right and power, directly or indirectly, through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract.

"BACKBONE SITE" OR "SITE" means the geographic location where Fixed Network Equipment will be installed, in accordance with the Statement of Work and Services. Such location to be identified in the Statement of Work and Services by either (i) latitude and

longitude, (ii) commonly known street names and address, or (iii) other commonly known building references, which may include the room and floor numbers.

"**BACKBONE SITE COST**" shall have the meaning given such term in Section 4.05 hereof.

"**BASE SYSTEM**" means all the equipment that comprise the City's existing trunking radio system used by the City's Public Works and other City departments and agencies, as such equipment is listed in Appendix K attached to the Performance Specifications.

"**CHANGE ORDER**" means a written instrument, signed by the Project Manager and the General Manager, modifying the Statement of Work and Services.

"**CHRONIC FAILURE**" means the repeated and unplanned failure prior to Final Project Acceptance during the Reliability Period or any Extended Reliability Period of a system or subsystem, listed in the definition of "Major Failure," caused by Contractor or its subcontractor or its Equipment. The specific conditions of degraded operation that shall be considered in determining a "Chronic Failure" are identified in the Performance Specifications, Section 2.4.3, System Availability, as minor failures which lead to degraded operation of the Project.

"**CITY**" means the City and County of San Francisco, a municipal corporation.

"**CLARIFICATION**" means a document consisting of supplementary details, instructions or information issued by the Project Manager to Contractor, which document clarifies the Statement of Work and Services.

"**CONTRACTOR**" means Motorola, Inc., a Delaware corporation.

"**CONTROLLER**" means the Controller of the City and County of San Francisco.

"**CORPORATION**" means the City and County of San Francisco Finance Corporation or any successor in interest thereto.

"**COVERAGE ENHANCEMENT PHASE**" means the optional phase of Work, Services and Equipment that the City may elect to acquire as part of the whole Project as such Phase is further described in Section 3.03(c).

"**CPI**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics.

"DAY" means calendar day, any and every day shown on the calendar, Sundays and holidays included, unless otherwise designated herein. This definition shall be applicable regardless of whether the term is capitalized.

"DEFECTIVE WORK" means work that (i) is faulty or deficient, (ii) does not conform to the Statement of Work and Services, (iii) does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Acceptance Test Plan, (iv) does not meet or exceed the Performance Specifications, or (v) has been damaged prior to the Final Acceptance of the Project.

"DETAIL DESIGN" means the final system design for the entire Project to be prepared and delivered by Contractor pursuant to Section 6.01 hereof.

"DTIS" means The Department of Telecommunications and Information Services of the City and County of San Francisco.

"800 MHZ PROJECT" means the upgrade and expansion of the Base System and acquisition and installation of a Citywide 800 MHz trunking radio communication system, all to be combined into a seamless trunking radio communication system for the City.

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"EQUIPMENT" means the hardware, software, furniture, housing and any other item required to install, operate, support and maintain the Project, which equipment shall be specified in the Statement of Work and Services. Equipment for the Project shall be classified as follows: (i) "Fixed Network Equipment": any equipment permanently installed at a specific site including trunked radio system, microwave transmission system, console control equipment and system manager equipment and terminals; (ii) "Mobile Equipment": any equipment installed in a vehicle for operation; (iii) "Portable Equipment": any equipment carried by personnel for operation; and (iv) "Test and Support Equipment": any equipment, which may be fixed, mobile, portable, or vehicular, required to check, accept, support, administer and maintain the Project.

"ESCROW AGREEMENT" shall have the meaning given such term in Section 11.04.

"EXTENDED RELIABILITY PERIOD" shall have the definition given such term in the definition of Reliability Period.

"FALL BACK PROCEDURES" are those manual procedures which require additional City personnel or significant additional man hours beyond those required of the system or subsystem had the system or the subsystem not failed.

"FINAL ACCEPTANCE CERTIFICATE" means final written acceptance of the Project, which must include all the following certifications by the City's Project Manager: (i) the

Project is complete, fully operational as an integrated system and performs in accordance with the Statement of Work and Services and any other applicable published specifications; (ii) the Project meets or exceeds the Performance Specifications; (iii) the Project passed all applicable Acceptance Test Plans; (iv) all training for the Project has been satisfactorily completed, (v) all documentation required by Article 13 hereof has been delivered, and (vi) the Reliability Period and the Extended Reliability Period, if applicable, has ended.

"**FINAL ACCEPTANCE OF THE PROJECT**" or "**FINAL PROJECT ACCEPTANCE**" means the date on which the City delivers to the Contractor the Final Acceptance Certificate.

"**FINANCIAL TRUSTEE**" means the bond trustee selected by the City to act as trustee for the lease revenue bonds to be issued to finance the acquisition of the Project or any successor in interest thereto.

"**FREQUENCY COORDINATOR**" shall have the meaning given such term in Section 15.02(d) hereof.

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"GENERAL MANAGER" means the General Manager of the Division of Telecommunications of DTIS, or authorized representative or deputy.

"**LABOR RATE SCHEDULE**" means the hourly labor rates for the installation of any Additional Equipment or any Change Order, as such schedule is set forth in Exhibit H attached hereto.

"**LICENSE**" shall have the meaning given such term in Section 11.01 hereof.

"**LOSSES**" means any losses, liabilities, damages, cost and/or expenses (including reasonable attorneys fees).

"**MAJOR FAILURE**" means a total or partial failure of any systems or subsystems hereafter listed during the Reliability Period or any Extended Reliability Period, if applicable, of such magnitude that Fall Back Procedures are reasonably being instituted to continue operations of that particular system or subsystem. The pertinent systems and subsystems are as follows: the trunked radio system, the radio console system, the microwave transmission system, and the system manager terminals. The specific outage conditions that constitute a "Major Failure" are identified in the Performance Specifications, Section 2.4.3, System Availability.

"**MASTER AGREEMENT**" means this Citywide 800 MHz Radio System Project Agreement, dated as of September 22, 1997, by and between the City and Contractor, together with all Exhibits.

"MASTER PROJECT SCHEDULE" means the master time line for the acquisition, delivery and installation of the Project, as such schedule is set forth in Exhibit E attached hereto.

"OPTIONAL PHASES" shall mean the two separate optional phases of the Project defined herein as the "Coverage Enhancement Phase" and the "WDM Phase."

"PARTIES" means the City and the Contractor.

"PAYMENT MILESTONE" shall have the meaning given such term in Section 4.05 hereof.

"PAYMENT SCHEDULE" means the schedule of progress payments to be made by the City in connection with the Project, as such schedule is set forth in Section 4.05 hereof.

"PERFORMANCE SPECIFICATIONS" means the minimum specifications that the Project must meet or exceed, as such specifications are set forth in Exhibit A attached hereto.

"PHASE" means "Phase One of the Project," "Phase Two of Project" and, if the City elects to proceed with one or both the Optional Phases, then the selected Phase.

"PHASE ONE OF PROJECT" means the first subdivision of Work, Services and Equipment to be provided for the Project, as generally described in Section 3.03 hereof.

"PHASE TWO OF PROJECT" means the second subdivision of Work, Services and Equipment to be provided for the Project, as generally described in Section 3.03 hereof.

"PRELIMINARY DESIGN" means the preliminary system design of the Project as described and set forth in the Statement of Work and Services and the Project User Equipment List.

"PROJECT" shall have the meaning given such term in Section 3.01 hereof.

"PROJECT COST ITEMIZATION SCHEDULE" means the schedule itemizing the individual cost and expenses for the Project, as such schedule is set forth in Exhibit D attached hereto.

"PROJECT MANAGER" means that individual specified as the Project Manager for the respective parties, pursuant to Section 6.04 hereof.

"PROJECT PRICE" shall mean an amount not to exceed Thirty Six Million Five Hundred Forty Seven Thousand Three Hundred Sixty Five Dollars (\$36,547,365), as such



amount may be adjusted in strict accordance with the express provisions of this Master Agreement and Resolution No. 804-97.

"**PROJECT USER EQUIPMENT**" means the Mobile Equipment, Portable Equipment, Test and Support Equipment that the Contractor must provide as part of the Project, which Equipment is listed in Exhibit C attached hereto.

"**PROPRIETARY**" means any protected information, software, and other Equipment, including any of its subassemblies and not available for public use.

"**PURCHASER**" means the Director of Purchasing and Services of the City and County of San Francisco.

"**RELATED PARTIES**" means the City's employees, officials, agents, successors and/or assigns.

"**RELIABILITY PERIOD**" shall mean the period set forth in Section 7.03 hereof.

"**REQUEST TO COMMENCE**" means City's written notice to the Contractor to commence a Phase or part thereof, which notice shall be in the form attached hereto as Exhibit I.

"**SECRETARY**" means the Secretary of the Corporation, or authorized representative or assistant.

"**SERVICES**" means labor required to complete the Work, and to fully provide the Project in accordance with the Statement of Work and Services.

"**SOFTWARE**" means all the software needed to operate the Project. Such software shall be the latest version available unless otherwise requested by DTIS in writing. Software shall further mean (i) all instruction code sets, (ii) any related users manuals, (iii) training materials, help text, any other written or graphic materials of Contractor that describes the operation of the Software, and (iv) magnetic media, and optical media. At the request of DTIS, Contractor shall place any and all source codes and object codes into escrow.

"**STATEMENT OF WORK AND SERVICES**" means the written statement prepared by Contractor setting forth all work and services to be provided by Contractor in connection with the acquisition, installation and delivery of the Project. The Statement of Work and Services shall include all hardware configuration documents, including drawings and description of each major Equipment subsystem, principles of operation, electrical function drawings, circuit schematics, panel layout drawings, parts lists, system block drawings, cable runs and terminations.

"STOP WORK ORDER" means written notice of the General Manager ordering a certain activity or work connected with the Project to cease.

"SUBCONTRACTOR" means any person, firm, partnership, corporation, or combination thereof, or their respective duly authorized representative, who has or have entered into a contract with Contractor, to do any portion of the Project.

"SYSTEM CUTOVER" means when the proposed user departments have transitioned from their existing radio systems to the Project. The proposed user departments are as follows: DTIS, the Water Department, the Department of Recreation and Parks, the Department of Parking and Traffic, the Sheriff's Department, the Department of Public Health, the Fire Department, the Police Department and the Office of Emergency Services.

"TURN-KEY" means that the Project is fully functional, operational, ready for its intended use, meets or exceeds all the Performance Specifications and has passed all portions of the Acceptance Test Plan.

"UPGRADE" means modification to a Site and or the addition or provision of Equipment to enhance or add features or functionally not originally provided for in the Statement of Work and Services. This definition shall be applicable regardless of whether the term is capitalized.

"USER EQUIPMENT" means Mobile Equipment, Portable Equipment and Test and Support Equipment.

"WDN PHASE" means the optional Phase of Work, Services and Equipment that the City may elect to acquire as part of the whole Project as such Phase is further described in Section 3.03(d).

"WORK" means the implementation, assembly, installation, optimization, integration, required by this Master Agreement, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations hereunder. The Work may constitute the whole or part of the Project.

## ARTICLE 2

### TERM

**Section 2.01. Term of Master Agreement.** The term of this Master Agreement shall commence on September 22, 1997 and shall expire on September 21, 2007, unless sooner terminated by the City pursuant to the terms of this Master Agreement.

**Section 2.02. Termination.**

(a) **City's Right to Terminate.** The City shall have the right to terminate this Master Agreement as provided in and in accordance with the express terms of this Master Agreement. In addition to such termination rights, the City may terminate this Master Agreement, with or without cause, in whole or in part, by providing the Contractor with thirty (30) days' advance notice thereof.

(b) After receipt of a notice of termination, and except as otherwise directed by the City, the Contractor shall:

(i) Stop work under this Master Agreement on the date and to the extent specified in the notice of termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the work under this Master Agreement which is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;

(iv) Assign to the City in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City to the extent the City may require. City's approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, the work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of the work terminated by the notice of termination, and the completed or partially completed work which, if the Master Agreement had been completed, would have been required to be furnished to the City;

(vii) Complete performance of such part of the work as shall not have been terminated by the notice of termination; and

(viii) Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Master Agreement which is in the possession of the Contractor and in which the City has or may acquire an interest.

(c) Upon City's termination of this Master Agreement for convenience, Contractor will submit an invoice to City for the actual work completed and Equipment delivered, all of which the City has inspected, tested and accepted. City shall pay Contractor for the remaining unpaid amounts based on the Project Cost Itemization Schedule attached hereto.

(d) In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the contract, post-termination employee salaries, post-termination administrative expenses, post-termination overhead, the costs of preparing and submitting the bid, attorney's fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under subsection (e) of this Section.

(e) This section shall not prohibit Contractor from recovering costs necessary to discontinue further work under this Master Agreement as provided for in subsection (b) of this Section, or costs authorized by City to settle claims from subcontractors, or costs necessary for preparation of Contractor's termination claim.

(f) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Master Agreement, (ii) any claim which the City may have against the Contractor in connection with this Master Agreement, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other items kept by the Contractor or sold, under the provisions of this clause, and not otherwise recovered by or credited to the City.

(g) Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

### ARTICLE 3

#### THE PROJECT

**Section 3.01. Equipment, Labor and Services.** In consideration for the Project Price, Contractor shall provide all the following:

(a) all the Equipment, labor and services necessary to provide the Project as such equipment, labor and services are detailed in the Statement of Work and Services and the Performance Specifications.

- (b) All the Project User Equipment.
- (c) All the documentation, manuals and materials specified in Article 13 hereof and Appendix B of the Performance Specifications.
- (d) All the maintenance and support services specified in Section 14.02 hereof.
- (e) All the Software necessary to have an operational Project that meets the Performance Specifications together with cost to place any and all source codes for the Software in an escrow.
- (f) Such personnel necessary to provide all the training classes specified in Section 12.01 hereof.
- (g) Such personnel necessary for testing and inspecting the Project, as such inspection and tests are outlined in the Acceptance Test Plan.
- (h) All shipping, handling and freight cost and expenses incurred for the delivery of all parts, materials, and Equipment for the Project.
- (i) All taxes, impositions and fees imposed by any governmental entity on any part, material or Equipment for the Project.
- (j) All storage costs for all parts, materials and Equipment for the Project.

For purposes of this Master Agreement, all items referenced in (a) through (j) above shall be collectively referred to as the "Project." If the City elects to acquire any portion of the Coverage Enhancement Phase or the WDN Phase, that portion shall be deemed to be part of the Project for all purposes of this Master Agreement. To the extent the City elects to include the Coverage Enhancement Phase or the WDN Phase, the Project Price shall be adjusted in accordance with Section 4.01 hereof.

**Section 3.02. City's Responsibilities.** City shall perform the following coincident with the performance of this Master Agreement.

- (1) Provide a designated Project Manager.
- (2) Provide ingress and egress to City's facilities and/or sites as requested by Contractor and have such facilities available for installation of the equipment to be installed.
- (3) Provide adequate telephone lines for the installation and operation of the equipment as specified in the Statement of Work and Services.

(4) Provide adequate AC Power at 117 VAC + 10%, 60 Hz for the installation and operation of the equipment as specified in the Statement of Work and Services.

(5) Provide a designated work area with adequate heat and light, and a secure storage area for equipment delivered to the City. The City shall be solely liable for loss or damage to equipment prior to, during and following installation when such equipment is on or within City's vehicles.

**Section 3.03. The Project and Optional Phases.** The Project shall be acquired, constructed, and delivered in at least two separate phases. Phase One of the Project shall be divided into two parts. The City shall not be obligated to acquire either Phase or the parts of Phase One of the Project until it delivers a Request to Commence for the particular Phase and part and the Controller certifies that sufficient unencumbered funds have been appropriated and are available for the particular Phase or part. The City may expand the Project by electing to proceed with either or both of the Optional Phases. The description of each Phase is set forth below. The parties agree that these descriptions are general and are further defined in the Performance Specifications and the Statement of Work and Services. Contractor acknowledges and agrees that the City shall have the right to delete any Phase or part of Phase or increase or decrease the quantities of user equipment purchased in accordance with Section 4.01(c) hereof

(a) **Phase One of Project.**

(1) **Part One of Phase One.** Part One shall consist of the completion, delivery and approval of the Detail Design for the Project (exclusive of the Optional Phases).

(2) **Part Two of Phase One.** Part Two of Phase One of the Project consists of the acquisition and construction of an eight-Site, 23 channel simulcast trunking radio system for the City's Police, Fire, Public Health, Office of Emergency Services, Parking and Traffic, Recreation and Parks, Sheriff, Telecommunications and Information Services, and Water departments. The eight Sites requiring upgrades and Fixed Network Equipment are: (1) Central Radio Station, 1 Twin Peaks Boulevard, (2) Forest Hill water tank, 100 Mendosa Avenue, (3) A T & T facility at Bernal Heights, 99 Moultrie Street, (4) Fort Miley/VA Hospital, 43rd and Clement, (5) San Francisco State University, Thorton Hall, (6) One Market Plaza, 1 Market Street, (7) Building at Clay and Jones, 1250 Clay Street, and (8) Reservoir 2b/South Hill water tank at Oakridge and Alta Vista (Daly City). If one or more of these radio sites is unavailable, DTIS may select an alternate site in accordance with Section 6.07(e). Phase One of the Project shall also include all Equipment, Work, and Services required for: (1) the upgrade of DTIS Radio Division facilities at 901 Rankin Street for the establishment of an alarm monitoring station and equipment repair facility; (2) the trunking radio system; (3) the microwave transmission system; (4) the radio console system and all radio consoles listed in Exhibit C; (5) all user equipment for the category "other" as listed in Exhibit C; (6) all test equipment listed in Exhibit C; (7) all special areas of coverage listed as "mandatory" in Appendix D attached to

the Performance Specifications; (8) all technical training and system management training listed in Exhibit L; and (9) all maintenance and repairs required for the Fixed Network Equipment up to the start of the warranty period.

(3) **Civil Work for Phase One.** Contractor acknowledges that the guaranteed maximum price for the Site upgrade work and upgrade of DTIS Radio Division facilities at 901 Rankin St. shall not exceed Four Million One Hundred Thirty-Five Thousand Five Hundred Eighty-Eight Dollars (\$4,135,588), which amount is included as part of the total Project Price. This amount includes the Contractor's management fee. Prior to the commencement of this Work, the City may prepare a more detailed design. City shall cause Fluor Daniel, Inc. ("Fluor") to prepare an estimate for this work which shall remain sealed until the appropriate time, as indicated below. In such estimate, Fluor shall include a twenty percent (20%) management fee for the Contractor. Within fourteen (14) days of receipt of the City's final design documentation for this Work, Contractor shall notify the City whether the detailed design as whole is no greater than the original scope for which the guaranteed maximum price was submitted. In making such determination, Contractor must, in good faith, take into consideration both increases and reductions in the scope and analyze it in the aggregate. Based on this analysis, the parties shall follow either (A) or (B) below:

(A) **Cost of Scope exceeds Guaranteed Maximum Price.** If the Contractor reasonably concludes that the scope in the aggregate has increased, Contractor shall submit a new guaranteed maximum price for these services. Upon receiving this new guaranteed maximum price, the City may (1) reject it, (2) reduce the scope of the services or (3) accept the new guaranteed maximum price. If the City reduces the scope of the services to bring the cost below the guaranteed maximum price, the parties shall follow the procedure set forth in (B) below and Fluor shall revise its estimate. If the City accepts the new guaranteed maximum price, the City and Contractor shall open Fluor's estimate on the civil work. If the difference between Fluor's estimate and the guaranteed maximum price is less than ten percent, the City shall proceed with the subcontractor selected by the Contractor at a price not to exceed the new guaranteed maximum, which includes the twenty percent (20%) management fee for the Contractor. If the difference exceeds ten percent, the City shall have the right to proceed with the Contractor's subcontractor or require the Contractor to bid out the Civil Work in accordance with the procedure set forth below.

(B) **Guaranteed Maximum Price Remains the Same.** If the guaranteed maximum price for the civil work remains unchanged, Contractor shall submit to the City's Project Manager a revised detailed cost estimate for the civil work with a total price. Contractor's revised cost estimate shall conform to the format of the Project Cost Itemization Schedule and shall not be greater than the guaranteed maximum price. If the difference between Fluor's estimate and the guaranteed maximum price is less than ten percent, the City shall proceed with the subcontractor selected by the Contractor at a price not to exceed the

Contractor's new estimate which includes an additional twenty percent charge to cover the Contractor's management fee. If the difference exceeds ten percent, the City shall have the right to proceed with the Contractor's subcontractor or require the Contractor to bid out the Civil Work in accordance with the procedure set forth below.

Within ten (10) days of receipt of Contractor's revised cost estimate, City will either (1) notify Contractor of City's acceptance of the Contractor's revised cost estimate in which case the Project Price will be adjusted accordingly or (2) notify Contractor of the City's rejection of Contractor's revised estimate in which case Contractor shall, within thirty (30) days, submit to the City's Project Manager bids from three different certified MBE/WBE/LBE subcontractors for radio site upgrade work. After certification by the City that bidders are qualified to perform the work, Contractor shall select lowest qualified subcontractor and Project Price will be adjusted accordingly. The City shall reimburse Contractor for its actual cost for bidding this work, provided that such amount does not exceed \$25,000. City reserves the right to reject all bids and contract separately for this work with an MBE/WBE/LBE.

Upon the completion of the process set forth in this Section 3.03(a)(3) hereof, the Contractor shall submit to City the hourly rates for the services set forth in Exhibit H-2. In no way shall the above process relieve Contractor from its obligation to conform to Section 18.02, required MBE/WBE/LBE participation or its obligation to adhere to the Master Project Schedule. In no event shall the total Project Price be increased.

A more detailed description of Work, Services and Equipment required under Phase One of the Project is contained in Exhibit B attached hereto.

(b) **Phase Two of Project**. Phase Two of the Project shall include all Equipment, Work and Services required for: (1) all user equipment listed in Exhibit C attached hereto not previously purchased under Phase One of the Project; (2) all system documentation listed in Appendix B attached to the Performance Specifications; all warranty support; and all user training listed in Exhibit L attached hereto.

A more detailed description of Work, Services and Equipment required under Phase Two of the Project is contained in Exhibit B attached hereto.

(c) **Optional Coverage Enhancement Phase**. In addition to the two Phases of the Project, the City may elect to acquire certain Equipment and Services to provide enhanced coverage ("**Coverage Enhancement Phase**"). Subject to the Controller's certification of available funds, the City may purchase this Equipment and Services by sending a Request to Commence specifying the portion of the Phase that the City desires to purchase. The Coverage Enhancement Phase shall consist of all Equipment, Work, and Services required for: (1) all special areas of coverage listed as "optional" in Appendix D; (2) backbone radio site upgrade and Fixed Network Equipment (FNE) for radio sites at Potrero Hill water tower, 22nd and Carolina



and radio site at Presidio, 314 Deems Road; and the CERS Manager as defined in Section 2.3 of the Performance Specifications. **The parties acknowledge that this Phase does not supplant Contractor's obligation to meet all the coverage requirements in the Performance Specifications for Phase One and Phase Two of the Project. To the extent the City elects to proceed with this Phase, in whole or in part, the Contractor shall increase the amount of its Payment Bond and Performance Bond by an amount equal to the increase in the Project Price. Contract shall commence work on this Phase upon receiving the requisite Request to Commence for this Phase. Until the Request to Commence is sent and the Controller certifies that sufficient funds are available for this Phase, the City shall not be obligated to purchase any portion of the Optional Coverage Enhancement Phase. To the extent that a Request to Commence is sent, the City obligation to purchase the items in the Phase shall be limited to those items set forth in the Request to Commence.**

**(d) Optional Wireless Data Network Phase.**

(1) In addition to the above Phases, the City may elect to acquire the Wireless Data Network ("**WDN Phase**"). The WDN Phase is a five (5) channel eight site 800 MHz high speed wireless data network capable of transmitting data to and receiving data from mobile and portable computing terminals at a minimum raw data rate of 19.2 Kbps per channel. The WDN Phase shall be designed to meet the public safety data traffic loading requirements of the Police and Fire Departments through the year 2005. The WDN Phase shall provide sufficient radio frequency signal for 95% on street portable computing terminals coverage as defined in the Performance Specifications. The WDN Phase should use a combination of channel reuse and automatic cell transfer (site selection) techniques to maximize useable data throughput for the five channels allocated to the City.

(2) The WDN Phase shall include all Equipment, Work, and Services required to provide a complete and operational system. The WDN Phase shall consist of:

1. Redundant hot-standby radio network controller equipment to be located at the 911 Center at Margaret Hayward Playground;
2. High-speed data base stations to be located at the eight Sites identified in Phase One of the Project;
3. Any Site-to-Site inter-connectivity required but not previously provided in Phase One of the Project;
4. Any additional site upgrade required but not previously provided in Phase One of the Project;
5. Warranty support;
6. Technical and system management training;
7. Fifteen minute (minimum) Uninterruptable Power Supply for the Radio Network Controller;
8. Generator backed-up circuits for the data base stations.

The WDN Phase shall be capable of expansion to a minimum of 16 data base stations to support increases in sites, base stations, and channels to improve in-building coverage. The WDN Phase should deliver inbound and outbound messages and the associated acknowledgment within eight seconds for 95% of the time, at peak-hour traffic load of the City. Message prioritization techniques are desired to maximize data throughput capacity. In determining throughput, the number of channels, number of sites, and fixed-end equipment processing capabilities must be considered. The WDN Phase must be optimized to provide the required data throughput to/from a moving vehicle traveling at 55 MPH. The Contractor shall demonstrate the feasibility of the WDN Phase's system design through detailed analytical models, computer simulations, and actual performance tests. The models and simulations must demonstrate that the WDN Phase is capable of supporting the traffic load projected for the year 2005.

(3) The WDN Phase shall provide mobile and portable terminals inter-connectivity to the Police Department's computer-aided dispatch system, provided by Tiburon, Inc., and to other databases such as the San Francisco Police Department and San Francisco Fire Department Record Management Systems, the National Crime Information Center (NCIC), Police Information Network, California Law Enforcement Telecommunications System, and other databases through the computer-aided dispatch system.

(4) To acquire the WDN Phase, the City shall follow the following procedure: The City shall send written notice to the Contractor of its desire to acquire the WDN Phase. The City shall also submit with such notice a proposed supplement to the Performance Specifications. Within fifteen (15) days of receiving such documentation, the Contractor shall send written notice thereof to the City as to whether it can meet or exceed the Performance Specifications. To the extent Contractor cannot meet the Performance Specifications, the Contractor shall specify the reason why. Contractor shall also provide proposed revisions to the City's document. Upon this response, the City may accept or reject the revisions. Once the Performance Specifications are agreed upon by the parties, the Contractor shall be obligated to submit to the City the following documentation: (1) price for the Phase not to exceed the amount set forth in Section 4.01, (2) supplemental Statement of Work and Services, (3) a supplemental Acceptance Test Plan and (4) a supplemental Master Project Schedule. Upon receiving the Contractor's documentation, the City shall either accept or comment on the documentation. Unless unreasonable, Contractor shall incorporate all of the City's comments. After these documents are agreed upon by the parties, the City may send the Request to Commence on this Phase. Until the Request to Commence is sent and the Controller certifies that sufficient funds are available for this Phase, the City shall have no obligation to purchase the WDN Phase of the Project.

(e) **Additional Equipment Purchase.** In addition to and separate and apart from the Equipment to be purchased for the Project, the City may, but is not obligated to, purchase Additional Equipment from Contractor in accordance with Section 4.02(a) hereof. The City may purchase up to one million dollars worth of Additional Equipment per fiscal year under this Master Agreement without further approval of the Board of Supervisors.

**Section 3.04. State of the Art.** The Contractor acknowledges that the City desires to have the most current equipment and software for the Project at the time of installation. If Contractor has compatible improved equipment or software projects available thirty (30) days prior to shipment, Contractor shall immediately notify the City. Such notice must provide an assessment, to the extent such information is available, of the advantages, disadvantages and cost impact to the City, if any, of utilizing such alternative equipment or software. Within ten (10) Business Days, the City shall notify the Contractor as to whether it desires to utilize or disregard the alternative equipment or software.

## ARTICLE 4

### PRICING AND PAYMENT

#### **Section 4.01. Project Price.**

##### **(a) General Pricing.**

(i) In consideration for providing the Project, the City shall pay the Contractor the Project Price, which amount shall be due and payable in accordance with the Payment Schedule set forth in Section 4.05 hereof and this Section. The Project Price is Thirty Six Million Five Hundred Forty-Seven Thousand Three Hundred Sixty-Five Dollars (\$36,547,365), and is divided as follows: Part One of Phase One is One Million Three Hundred Ninety-Nine Thousand Two Hundred Eighty-Four Dollars (\$1,399,284), Part Two of the Phase One is Twenty-Two Million Nine Hundred Fifty-Seven Thousand Sixty-One Dollars (\$22,957,061), and Phase Two of the Project is Twelve Million One Hundred Ninety-One Thousand Twenty Dollars (\$12,191,020). To the extent the City elects to proceed with any part of an Optional Phase, the Project Price shall be augmented in accordance with (ii) and (iii) below. The total amount payable by the City for the Project shall not exceed the Project Price. The total amount payable by the City for each Phase and Part shall not exceed the amount allocated for such Phase or Part. The amount payable for each Phase and Part shall be subject to prior written certification by the Controller that sufficient unencumbered funds are available to pay for such Phase or Part. Except for Change Orders approved pursuant to Section 6.03 hereof, any cost overruns or unforeseen expenses incurred on the Project exceeding the Project Price shall be borne solely by the Contractor. The City has no liability or obligation to pay such cost or expenses.

(ii) **Coverage Enhancement.** If the City elects to purchase all or any portion of the Optional Phase, the Project Price shall be augmented by an amount not to exceed the price for the item purchased. The price for all parts of the Optional Phase are set forth in the Project Cost Itemization Schedule. The maximum price for this Phase in its entirety is Four Million Seven Hundred Twenty One Thousand Two Hundred Thirty-One Dollars (\$4,721,231).

(iii) **WDN Phase.** If the City elects to purchase the WDN Phase, the Project Price shall be augmented by an amount agreed upon by the parties not to exceed One Million Sixty-Three Thousand Five Hundred Twenty-Eight Dollars (\$1,063,528). In determining the amount to be paid, the parties shall use the prices set forth in the Project Cost Itemization Schedule, Labor Rate Schedule and the Additional Equipment Price Schedule.

(b) **Lowest Price Guarantee.** Contractor represents and guarantees that City is receiving the highest, or equal to the highest, aggregate system discount that the Contractor has granted to any other person or entity on a similar 800 MHz trunked radio project. Except as otherwise required under prevailing wage requirements, Contractor represents and guarantees that the City hourly labor rates set forth in Exhibit H-1 are equal to or lower than the lowest rates previously provided to any other person or entity on an 800 MHz trunked radio project in the last two (2) years. Should the City discover that the Contractor has provided a higher system discount or provided any services at a lower price, City shall be entitled to receive an amount equal to two times the difference. The foregoing remedy is in addition to any other remedy the City has under the law. To the extent Contractor reduced the list price for any equipment prior to the shipment of that particular item, the City shall be entitled to receive the benefit of the lower price; and the total Project Price shall be adjusted accordingly.

(c) **Value Engineering Pricing.** The City may elect to reduce the scope of Project as hereinafter described. For any Backbone Equipment, the City may elect to reduce the scope of Project at any time prior to the City's approval of the Detail Design and Statement of Work and Services for the particular Backbone Equipment to be delivered by Contractor. For any other Equipment or Services, the City shall have the right to reduce such portion of the Project at any time prior to the delivery of the Equipment or the provision of the services by the Contractor. To reduce the scope of the Project, the City must send a letter to the Contractor's Project Manager and such letter must be executed by the City's Project Manager and the General Manager. Such letter shall clearly state the portion of the Project being reduced. Contractor shall review all requested scope changes. If Contractor determines that a requested scope change will affect its ability to meet the Performance Specifications, Contractor must immediately inform the City. Upon receiving such notice, the City will need to determine whether it wishes to proceed with proposed scope changes. If the City elects to proceed with the scope changes, the parties must agree upon mutually acceptable changes to the Performance Specifications. In connection with all requested scope changes, Contractor shall prepare an estimate of the cost of the Equipment and/or services being removed from the scope of the Project. Such estimate must be submitted within ten (10) days of receiving the City's scope reduction letter. Once the City receives the Contractor's estimate, the City shall, in writing, approve, disapprove or request further information regarding the estimate. If approved, the Project Price shall automatically be reduced by the amount of the estimate and the Detail Design and Statement of Work and Services shall be amended to reflect the scope change. Unless otherwise expressly agreed to by the Parties, Contractor shall continue to be fully responsible to ensure that the Project, as reduced, meets or exceeds the Performance Specifications.

**Section 4.02 Price of Additional Equipment.**

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(a) In addition to the Equipment purchased for the Project, the City may, but is not obligated to, purchase any additional Equipment ("**Additional Equipment**") subject to Section 3.03(e). For any Additional Equipment, City shall pay an additional amount over the Project Price. To the extent the Equipment to be purchased constitutes User Equipment, the amount payable by the City shall be based upon the Additional Equipment Price Schedule, attached hereto as Exhibit G, subject to the following discounts: Fixed Equipment--twenty-seven percent (27%), Mobile Equipment--twenty-seven percent (27%), Portable Equipment--twenty-seven percent (27%), Equipment parts--fifteen percent (15%), Batteries--discount given to the State of California under the Master Contract, dated February 1, 1997 (Contract No. 01CAC00408). To the extent the Equipment to be purchased constitutes Fixed Network Equipment, the amount payable by the City shall be based upon the price assigned to the particular piece of Equipment in the Project Cost Itemization Schedule. The prices set forth in the Additional Equipment Price Schedule and the Project Cost Itemization Schedule include all shipping, freight and handling cost to delivery the Equipment to the City. Any taxes, imposition or fee imposed by any governmental entity on the Additional Equipment shall be payable by the City upon delivery and installation of the Equipment and passage of the applicable portion of the Acceptance Test Plan. All purchases of Additional Equipment shall be subject to prior approval of the Purchaser and the Controller. If the Equipment is ordered prior to Final Acceptance of the Project, City shall pay for the Equipment in accordance with the Payment Schedule set forth in Section 4.05 hereof. If Equipment is ordered after Final Acceptance of the Project, City shall pay for the Equipment as follows: one hundred percent (100%) after delivery and installation of the Equipment and passage of the Acceptance Test Plan agreed upon by the parties for such piece of Additional Equipment. Should any Equipment on the price list become unavailable or obsolete, the City shall have the right to purchase any new item of Equipment that is functionally similar to the unavailable or obsolete Equipment. The price of the new item of Equipment shall equal the lesser of (i) the published list price of the Equipment less any applicable governmental discount (exclusive of federal discounts) and (ii) the price of the unavailable or obsolete Equipment. The Contractor acknowledges that this Master Agreement does not obligate the City to purchase any of the Additional Equipment from the Contractor. The City may elect to purchase such Equipment from any third party. Furthermore, the City reserves the right to purchase the Additional Equipment, but have a third party install such Equipment.

(b) **Adjustment of Prices.** All the prices in the Additional Equipment Price Schedule shall apply to all Additional Equipment that (i) the City orders by the second (2nd) anniversary of the execution of this Master Agreement and (ii) is scheduled for delivery by the third (3rd) anniversary of the execution of this Master Agreement. The price of any Additional Equipment that does not meet the above criteria shall be subject to an annual price adjustment based on the CPI for Information Processing Equipment. The prices for such Additional Equipment shall be initially adjusted on October 1, 1999. The adjustment shall be calculated by comparing the CPI published immediately preceding the Adjustment Date ("**Adjustment Index**") to the CPI

immediately preceding October 1, 1998 ("**1998 Base Index**"). If the Adjustment Index does not equal the 1998 Base Index, the prices shall be adjusted by multiplying the list price set forth in the Equipment Price Schedule by a fraction, the numerator of which shall be the Adjustment Index and the denominator of which shall be the 1998 Base Index. Commencing on October 1, 1999 and each October 1, thereafter ("**Adjustment Date**"), Contractor or the City shall compare the CPI published immediately preceding the Adjustment Date ("**Adjustment Index**") to the CPI published immediately preceding the prior Adjustment Date ("**Base Index**"). If the Adjustment Index does not equal the Base Index, the prices shall be adjusted by multiplying the price by a fraction, the numerator of which shall be the Adjustment Index and the denominator shall be the Base Index. In no event shall the price of any Equipment be increased at any one time more than six percent (6%). During the term of this Master Agreement, the prices shall not be increased, in the aggregate, more than eighteen percent (18%). No price adjustment shall be effective until party seeking the adjustment sends to the other party (i) a revised price schedule and (ii) all its calculations supporting the price adjustment. In the event a dispute arises with respect to a price adjustment, Contractor shall continue to deliver all the ordered Additional Equipment and install the same at the current prices, provided that the City segregates an amount equal to disputed amount in a separate account to be held by the City Treasurer until an agreeable settlement is reached. If the parties are unable to resolve the dispute within sixty (60) Days from the date the party receives notice of the adjustment, either party shall have the right to submit the matter to arbitration pursuant to Section 17.01.

(c) Available Equipment Not Listed in Additional Equipment Price Schedule. The City shall have the right to, but not be obligated to, purchase any Equipment which becomes available after the date hereof at the price set forth in the Contractor's U.S. Domestic Price Book published immediately preceding the City's written request to purchase such Equipment, subject to the following discounts: Fixed Equipment--twenty-seven percent (27%), Mobile Equipment--twenty-seven percent (27%), Portable Equipment--twenty-seven percent (27%), Equipment parts--fifteen percent (15%), Batteries--discount given to the State of California under the Master Contract, dated February 1, 1997 (Contract No. 01CAC00408).

#### **Section 4.03. Labor Costs**

(a) Rates. The cost of any labor provided or hired by Contractor for the purpose of furnishing, installing, testing or repairing any Additional Equipment or existing equipment owned by the City or any proposed work in a Change Order shall be based on the hourly rates set forth in Exhibit H attached hereto. If the cost of any required labor is not specified in Exhibit H, DTIS and Contractor shall agree upon a mutually acceptable hourly rate for the labor, and such rate shall remain effective for the term of this Master Agreement. The labor rates shall not be adjusted for overtime or holiday work unless expressly pre-approved in writing by the General Manager, the Purchaser and the Controller. The City is not obligated to use the Contractor's labor to install or test any Additional Equipment purchased from Contractor.

(b) **Duration.** All the labor rates set forth above shall remain in effect until the third (3rd) anniversary of the execution of this Agreement. Commencing on October 1, 1999 and every October 1 thereafter (each an "Adjustment Date") until the termination of this Master Agreement, Contractor or the City shall have the right to adjust the labor rate in an amount not to exceed the percentage change in the CPI. For the purpose of calculating the appropriate adjustment, Contractor or the City shall compare the CPI published immediately preceding the Adjustment Date ("**Labor Adjustment Index**") to the CPI published immediately preceding the prior Adjustment Date ("**Base Index**"). If the Labor Adjustment Index has increased or decreased over the Base Index, the rates shall be adjusted by multiplying the rate by a fraction, the numerator of which shall be the Labor Adjustment Index and the denominator shall be the Base Index. In no event shall the rates be increased at any one time more than six percent (6%). During the term of this Master Agreement, the labor shall not be increased in the aggregate more than eighteen percent (18%). No rate adjustment shall be effective until the party seeking the adjustment sends to the other party (i) a revised price schedule and (ii) all its calculations supporting the rate adjustment. In the event a dispute arises with respect to a rate increase, Contractor shall continue to provide all the necessary labor to progress with the Project as scheduled at the current rates, provided that the City segregates an amount equal to disputed amount in a separate account to be held by the City Treasurer until an agreeable settlement is reached. If the parties are unable to resolve the dispute within sixty (60) Days from the date the party receives notice of the rate adjustment, either party shall have the right to submit the matter to arbitration pursuant to Section 17.01.

**Section 4.04. Wages and Payrolls.** The following provisions shall apply to the extent that Contractor is providing any labor for any portion of the Project that constitutes a "public work or improvement" as defined by the relevant sections of state and local laws.

(a) It is hereby understood and agreed that all provisions of Section 1770 *et seq.* of the California Labor Code are required to be incorporated into every contract for any public work or improvement. To the extent Contractor is providing labor services for any portion of the Project that constitutes a public work or improvement, the above-referenced Labor Code sections are incorporated into this Master Agreement.

(b) To the extent Contractor is providing labor services for any portion of the Project that constitutes a public work or improvement, Section 6.34 through 6.43 of the San Francisco Administrative Code are incorporated into this Master Agreement. These code sections include, but are not limited to, the following requirements:

(1) Contractor shall pay to all persons performing labor in and about the Project not less than the highest general prevailing rate of wages determined as set forth hereinafter for the respective crafts and employment, including such wages for holiday and overtime work.

(2) Contractor shall insert in every subcontract or other arrangement which it may make for the performance of any work or labor provided for in this Master Agreement, a provision that said subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein after for the respective crafts and employment, including such wages for holiday and overtime work.

(3) Contractor shall keep or cause to be kept an accurate record showing the name, place or residence, occupation, and per diem pay, of each person engaged in the execution of this Master Agreement, and every subcontractor who shall undertake the performance of any part of the work on the Project shall keep a like record of each person engaged. All of said records shall at all times be open to the inspection of such work of the City and its authorized representatives.

(4) Contractor shall submit its monthly certified payrolls to the City for the record.

(5) Should Contractor or any subcontractor who performs any part of the work herein required fail to or neglect to pay to the persons who shall perform labor under this Master Agreement, subcontract or other arrangement, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, to the City and County of San Francisco the sum of twenty-five dollars (\$25.00) per day for each laborer, worker or mechanic employed for each calendar day or portion thereof, while said person shall be so employed and not paid said highest general prevailing rate of wages. The City will deduct the amount which would otherwise be due on said payment the amount of said forfeiture or forfeitures as so certified.

(6) No person performing labor or rendering service in the performance of any contract or subcontract for the Project shall perform labor for a longer period than forty (40) hours per week, of five (5) days of eight (8) hours each, excepting those in crafts in which a shorter work day now prevails by agreement in private employment. Contractor or subcontractor who violates this provision shall be liable for the same penalties and forfeitures as those specified in Subparagraph 5 above for each laborer, mechanic or artisan employed for each calendar day or portion thereof wherein such laborer, mechanic or artisan is compelled or permitted to work more than the days and hours specified herein. In the event that emergency conditions shall arise making a change advisable during the performance of this Master Agreement, or any portion thereof, the hours and days of labor may be extended beyond the limits hereinabove expressed, but not to exceed an additional 8-hours per day, upon the written authority of the City. Failure of Contractor to perform its contract within the time provided shall not be deemed to constitute an emergency.

(c) Certification of Payroll Records, in accordance with Section 1776 of the California Labor Code:



(1) Contractor shall, and shall require that its subcontractors, keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this Master Agreement.

(2) The payroll records shall be certified and shall be submitted to the City each month. Contractor's invoices shall not be processed until certified payroll records have been submitted up-to-date. In addition, the payroll records shall be available for inspection at all reasonable hours at the job site office of Contractor on the following basis:

(i) A certified copy of an employees payroll record shall be made available for inspection or furnished to such employee or its or her authorized representative on request.

(ii) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the City.

(iii) A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City and County of San Francisco, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be given access to such records at the job site office of Contractor.

(3) Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request.

(4) Any copy of payroll records made available for inspection as copies and furnished upon request of the public or any public agency by the City and County of San Francisco, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Contractor shall not be marked or obliterated.

(5) Contractor shall inform the City and County of San Francisco of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(6) In the event of noncompliance with the requirements of said Section 1776, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with said section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to the City and County of

San Francisco, forfeit twenty-five dollars (\$25.00) for each calendar day, or a portion thereof of non-compliance, for each worker, until strict compliance is effected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

(7) The responsibility for compliance with Section 1776 shall be on Contractor.

(d) A copy of the highest general prevailing wage rates will be posted at the Project site by the City, and such will be available for review at the appropriate City office.

**Section 4.05. Schedule of Payments.** The City shall make progress payments to Contractor in the amounts and upon the occurrence of the applicable milestone set forth below (each a "**Payment Milestone**"). Upon the occurrence of the applicable Payment Milestone, City shall pay the amount due and payable within thirty (30) days of receipt of the invoice from Contractor. The Payment Schedule for the Project is as follows:

(a) **Backbone Sites.** The Project Cost Itemization Schedule reflects the total cost for each Backbone Site, which cost includes the Equipment and labor cost, but excludes engineering costs ("**Backbone Site Cost**"). The Backbone Site Cost for each site shall be payable by the City in accordance with the following Payment Schedule: (1) twenty-nine percent (29%) of the Backbone Site Cost upon the complete system staging of the Site Equipment and passage of the applicable portion of the Acceptance Test Plan, (2) twenty-five percent (25%) of the Backbone Site Cost upon the final site acceptance and passage of the applicable portion of the Acceptance Test Plan, (3) thirty-five percent (35%) of the Backbone Site Cost upon final site acceptance for all Backbone Sites and passage of the applicable portion of the Acceptance Test Plan for the Backbone system, (5) ten percent (10%) of the Backbone Site Cost upon the delivery of the Final Acceptance Certificate for the Project, and (6) one percent (1%) of the Backbone Site Cost on the one-year anniversary of the delivery of the Final Acceptance Certificate.

(b) **Engineering Services.** The Project Cost Itemization Schedule reflects the total cost for all the Engineering Services (exclusive of non-professional services) for the entire Project ("**Project Engineering Costs**"). The Project Engineering Costs shall be due and payable by the City in accordance with the following Payment Schedule: (1) twenty-five percent (25%) Project Engineering Costs upon City's approval of the Detail Design and final Statement of Work and Services for all the Backbone Sites, (2) forty percent (40%) of the Project Engineering Costs upon the complete system staging of all the Equipment to be installed at all the sites and passage of all the applicable portions of the Acceptance Test Plan, (3) twenty-four percent (24%) of the Project Engineering Costs upon the Final Site Acceptance for all the Backbone Sites and passage of the applicable portion of the Acceptance Test Plan, (4) ten percent (10%) of the Project Engineering Costs upon the delivery of the Final Acceptance Certificate, and (5) one percent (1%) of the Project Engineering Costs on the one-year anniversary of the delivery of the Final Acceptance Certificate.

(c) **Portable and Mobile Equipment.** Progress payments for Portable and Mobile Equipment shall be as follows: (1) fifty percent (50%) of the Equipment Price upon delivery of the Portable Equipment to the designated site, inspection and passage of the applicable portion of the Acceptance Test Plan, (2) thirty-nine percent (39%) of the Equipment Price upon the City having beneficial use of such Equipment, (3) ten percent (10%) of the Equipment Price upon the delivery of the Final Acceptance Certificate for the Project, and (4) one percent (1%) of the Equipment Price on the one-year anniversary of the delivery of the Final Acceptance Certificate.

(d) **Subcontractors.** No progress payments shall be made for any subcontracted labor until the City has received a copy of the subcontract and expressly approves the subcontract. Progress payments for any subcontracted labor, other than Engineering Services and training, furnished for any Equipment shall be as follows: (i) ten percent (10%) of the contract amount upon the commencement of the subcontracted labor, (ii) eighty percent (80%) of the contract amount upon completion of all the work described in the subcontract and a certification of the City's Project Manager that the work has been completed and delivered to the City a copy of the subcontract(s) executed by Contractor and the subcontractor, and (iii) ten percent (10%) of the contract amount upon delivery of the Final Acceptance Certificate and the City's receipt from Contractor adequate evidence that Contractor has paid the subcontractor at least ninety percent (90%) of the amount due and payable under the subcontract.

(e) **Training.** The City shall pay the full amount of any training cost upon receiving an invoice covering such costs and upon satisfactory completion of training.

(f) **Miscellaneous Cost.** In the event Contractor incurs any cost or expense not covered above, the City shall pay the full amount of such cost or expense upon the delivery of the Final Acceptance Certificate.

**Section 4.06. Invoices.**

*Replaced mod 1*

(a) **Submitting Invoices.** At every Payment Milestone, Contractor shall have the right to submit an invoice to DTIS for the amount due and owing at such milestone. Invoiced amounts shall be based upon the Project Cost Itemization Schedule subject to any change orders or any unwaived liquidated damages payable by Contractor. All invoices shall provide a detailed list of the cost. All invoices must be in a form acceptable to the General Manager. All amounts paid shall be subject to audit by the City pursuant to Section 4.12 hereof. All invoices shall be mailed or delivered to:

General-Manager of the Division of Telecommunications  
Department of Telecommunications and Information Services  
901 Rankin Street  
San Francisco, California 94124

(b) **Submitting False Claims; Monetary Penalties.** Contractor acknowledges and accepts that if it submits a false claim to the City, the Contractor shall be liable to the City for: (1) treble damages, (2) a civil penalty of up to \$10,000 for each False Claim, and (3) all cost and expenses to bring a civil action, including attorney fees. The Contractor shall be guilty of submitting a false claim if it: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(c) **Disallowance.** In the event Contractor claims or receives payment from the City for a service, reimbursement for which is later disallowed by City, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Master Agreement or any other agreement.

**Section 4.07. Payment Authorization.** Within thirty (30) Days after receipt of an invoice from Contractor, DTIS shall issue a payment authorization to the Controller or the Corporation, as applicable, for such amount as due Contractor subject to the following:

(a) **Payment Authorization.** A payment authorization will be issued based on the City Project Manager's certification that the Project has reached the prescribed milestone in Section 4.05.

(b) **No Representation.** The certification of the City's Project Manager once given is subject to (i) any continuing evaluations of the work for conformance with this Master Agreement, (ii) results of subsequent tests and inspections, (iii) minor deviations correctable prior to completion and (iv) specific qualifications expressed by the City's Project Manager. The issuance of a payment authorization will not be a representation that the City's Project Manager has (i) made an exhaustive or continuous on-Site inspection to check the quality or quantity of the work and Equipment, (ii) reviewed installation means, methods, techniques, sequences or procedures, and (iii) made an exhaustive or continuous on-site test of the performance of the Equipment or the Project.

(c) **Continued Obligation to Replace.** Notwithstanding any payment by the City, the Contractor shall have a continuing obligation to replace any unsatisfactory Equipment, work or material (i) until the expiration of all applicable warranties and (ii) to the extent required by the warranties, as such warranties are specified in Article 15 hereof.

(d) **Change Orders.** Only Change Orders completely approved and executed may be included on the payment authorization and only that portion of the Change Order work actually performed is to be submitted for payment.

#### **Section 4.08. Withholding Payment.**

(a) **No Certification Can Be Made.** If the Project Manager cannot make any required certification, the City may opt to withhold, in whole or in part, any payment. If the City is unable to authorize payment in the amount of the invoice, the City will notify Contractor in writing. If Contractor and the City cannot agree on a revised amount, the City will promptly issue a payment authorization for the amount it deems proper.

(b) **Defective Work.** The City may opt to withhold a portion of any payment, because of any defective work or Equipment not remedied within thirty (30) days of receiving notice thereof from the City, the withheld amount being prorated to the value of the defective work or Equipment. In determining the amount to withhold, the City may consider the affect of the defective work on the Project as a whole and if the defective work materially impacts the operation or progress of other portions of the Project. Contractor shall have the right to request a longer period of time to correct the defect if it can reasonably show that it is diligently pursuing the correction and the defect cannot be corrected within thirty (30) days.

(c) **Third Party Claims.** In connection with any third party claims filed or reasonable evidence indicating probable filing of such claims, the City may withhold any payment, in whole or in part, if Contractor fails to provide reasonable evidence that a legitimate dispute exists between Contractor and the third party and such dispute relates to the Project. In the event Contractor can provide such evidence, the City shall continue to make payments to Contractor subject to the resolution of the dispute. However, if the City is required to pay the third party, Contractor shall return to the City the amount payable to the third party within five (5) Days of receiving a written request from the City.

(d) **Withholding No Effect on Surety.** The failure or refusal of the City to withhold any monies from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Master Agreement.

**Section 4.09. Budget and Fiscal Provisions.** This Master Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization is certified by the City Controller and any amount of the City's obligation

hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Section 4.09 shall control against any and all other provisions of this Master Agreement.

**Section 4.10. Appropriation.** If for any budgetary period of the City, the City fails to appropriate sufficient funds for the payment of any amounts due under this Master Agreement, the City shall have the right to terminate this Master Agreement. Upon any such termination, City shall return any Equipment the City has not paid for and for which no appropriation has been made by the City.

**Section 4.11. Guaranteed Maximum Costs.**

(a) **City's Obligations Limited To Certification Amount.** City's obligation hereunder shall not at any time exceed the amount certified by City for the purpose and period stated in such certification.

(b) **Gratuitous Services.** Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Master Agreement, and Contractor shall not perform any services or provide material, equipment or supplies beyond the scope of this Master Agreement unless this Master Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Master Agreement and which were not approved by a written amendment to this Master Agreement with authorization by City.

(c) **Approval Required For Additional Funding.** City and its employees and officers are not authorized to offer or promise to Contractor additional funding for this Master Agreement that would exceed the maximum amount of funding provided for in this Master Agreement for Contractor's performance hereunder. Additional funding for this Master Agreement in excess of the maximum provided in this Master Agreement shall require lawful approval and certification by City. City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) **Payments Must Be Authorized.** The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**Section 4.12. Audit and Inspection of Records.** Contractor agrees that the City, or an authorized representative, may audit and inspect, at all reasonable hours, Contractor's books and records as they pertain to this Master Agreement. Except as otherwise provided by law, the City will not release or divulge any proprietary information derived from such audit or inspection to third parties without the approval of Contractor. Said books and records shall be kept for three (3) years after the completion of this Master Agreement and shall be maintained and/or made available in San Francisco to the City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within said three-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. Contractor shall insert a clause containing all the provisions of this Section 4.12 in any subcontract in which payment thereunder could exceed Ten Thousand Dollars (\$10,000). The City shall not have the right to examine any portion of a book or record that reveals Contractor's actual cost for manufacturing any product or delivering any service, except subcontracting cost for a Project.

## ARTICLE 5

### MASTER PROJECT SCHEDULE

**Section 5.01. Master Project Schedule.** The Master Project Schedule for the Project is attached hereto as Exhibit E. The Contractor prepared the Master Project Schedule and represents and warrants to the City that it will meet all the dates specified in the Master Project Schedule and achieve Final Acceptance of the Project within nine hundred seventy-three (973) calendar days from the delivery of the initial Request to Commence by the City's Project Manager. The Contractor acknowledges and understands that the Master Project Schedule contains certain time-sensitive milestones ("**Critical Milestones**") that must be attained by certain dates; otherwise, the City will suffer financial harm. These Critical Milestones are as follows:

(1) Contractor shall complete Task No. 14.8 (TRS, MTS, SMC and RF Coverage ATP) within six hundred forty (640) calendar days from the initial Request to Commence by the City's Project Manager.

(2) Contractor shall complete Task No. 16.2.4 (CCE2 System Acceptance) within six hundred ninety-three (693) calendar days from the initial Request to Commence by the City's Project Manager.

(3) Contractor shall complete Task No. 17.2.1 (CCE1 Cut-over complete) within seven hundred forty-five (745) calendar days from the initial Request to Commence by the City's Project Manager.

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11

AMENDMENT 4

(4) Contractor shall complete Task No. 19.2.1 (CCE2 Cut-over complete) within eight hundred seventy-nine (879) calendar days from the initial Request to Commence by the City's Project Manager.

(5) Contractor shall complete Task No. 25 (Final System Acceptance) within nine hundred seventy-three (973) calendar days from the initial Request to Commence by the City's Project Manager.

The above Task Nos. and parenthetical task names are the numbers and names set forth in the original Master Project Schedule attached to the Master Agreement. The initial Request to Commence shall be the Request to Commence for the commencement of the Detail Design. Notwithstanding the use of working days in the Master Project Schedule, Contractor acknowledges that the above dates are in fact calendar days. If Contractor fails to meet any Critical Milestone by the applicable date, the City shall have the right to terminate this Master Agreement after the expiration of the applicable cure period set forth in Section 5.02(c). Notwithstanding the right to cure, the Contractor acknowledges that the City will incur costs and expenses for each day Contractor fails to achieve a Critical Milestone. The parties acknowledge and agree that the amount of damages incurred by the City due to such delay shall be extremely difficult to fix. Accordingly, the parties agree that Five Thousand Dollars (\$5,000.00) for each day that the Contractor fails to meet any Critical Milestone constitutes a reasonable estimate of the additional costs and expenses and detriment that the City will incur therefrom. Accordingly, Contractor shall pay Five Thousand Dollars (\$5,000.00) to the City for each day that the Contractor fails to meet any Critical Milestone. Contractor and City acknowledge that the Critical Milestone dates may be extended due to any Unavoidable Delay. **NO LIQUIDATED DAMAGES SHALL BE REDUCED OR WAIVED BY THE CITY UNLESS FIRST APPROVED BY THE BOARD OF SUPERVISORS AND THE CORPORATION.** The City's receipt of liquidated damages for the delay shall not affect any other legal remedy the City may have for any other breach of this Master Agreement. Any action taken prior to a schedule date in the Master Project Schedule must be approved, in writing, by the City's Project Manager. The Contractor shall provide a method of properly tracking the progress of the Project at both a management and detailed technical level. Any changes in the Critical Milestone dates must be approved in writing by the City's Project Manager and the Controller prior to the Critical Milestone dates. Notwithstanding anything to the contrary hereinabove, Contractor shall not be liable for liquidated damages in an amount in excess of ten percent (10%) of the Project Price.

**Section 5.02. City's Right to Perform Work.**

(a) In the event Contractor cannot meet any scheduled time specified in the Master Project Schedule, the City may send written notice to Contractor notifying Contractor of such failure. The City shall specify in the notice the task(s) Contractor has failed to complete within the required time. If Contractor does not cure such default within thirty (30) Days of receiving such notice, the City can (i) elect to perform all the necessary Work or obtain the necessary Equipment



to complete the Work and/or the Project pursuant to subsection (b) below, (ii) terminate this Master Agreement, or (iii) exercise any other remedies specified under this Master Agreement. Notwithstanding the foregoing, if nature of default is such that it cannot be cured within thirty (30) days, then no default shall occur if Contractor submits a cure plan within ten (10) days of receiving the notice of default. In no event shall any cure plan contemplate a cure period longer than ninety (90) days. Contractor must diligently cure all defaults.

(b) If Contractor does not cure the default as above provided and in the event the City elects to perform the necessary Work or obtain the necessary Equipment, the City shall send written notice to Contractor, notifying Contractor of its intent to provide the necessary labor, services, material or equipment to ensure that the Project progresses in a timely manner. The notice must be sent to Contractor prior to the City taking any action or incurring any costs thereon. All cost and expenses incurred by the City shall be deducted from any monies due or which may thereafter become due under this Master Agreement. Notwithstanding the City's right to perform Contractor's obligations under this Master Agreement, the City shall not be obligated to do so and can continue to expect Contractor to perform without notice to Contractor. Furthermore, none of the warranties provided for the Project shall be affected in any way if the City makes the election under Section 5.02(a)(i), provided that Contractor will not be obligated to warrant any equipment not manufactured by Contractor and not set forth in the Project Cost Itemization Schedule. If the delay involves a Critical Milestone, liquidated damages shall continue to accrue until the City elects to perform the necessary Work. In the event the City elects to perform the Work, the City shall have the right to collect any accrued liquidated damages in addition to the cost of performing the Work.

### **Section 5.03. Delays.**

(a) **Unavoidable Delays.** An "Unavoidable Delay" is (i) any occurrence or happening that materially impairs Contractor's ability to perform its obligations within the prescribed time and (ii) falls within one of the following categories: acts of God; fires, floods, windstorms and tornadoes; epidemics; quarantine restrictions; labor shortages; wars and terrorist acts; riots; insurrections; strikes; lockouts; sit-downs; material shortages; fuel shortages; the Mayor declares a moratorium on the Project; freight embargoes; or priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; provided, however, that none of the foregoing events shall constitute an Unavoidable Delay if it falls within any of the following: (i) any delay that could have been avoided by the exercise of care, prudence, foresight, preparation and diligence on the part of Contractor; (ii) any delay in the prosecution of parts of the work, which may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of other parts of the work, nor the completion of the whole work within the time specified; (iii) any reasonable delays resulting from time required by the City's approval of plans submitted by Contractor and for the making of surveys, measurements and inspections; or (iv) any delay arising from

interruptions occurring in the prosecution of the Work due to reasonable interference from other contractors employed by the City which do not necessarily prevent the completion of the whole Work within the time specified.

(b) **Procedure.** Within ten (10) Days of the occurrence of an Unavoidable Delay, Contractor shall notify the City in writing of the delay and the nature and estimated length of the delay. Contractor shall also provide the City with a new Master Project Schedule. The new Master Project Schedule shall not be effective until approved in writing by DTIS. Until the new Master Project Schedule is approved, the existing Master Project Schedule shall remain in effect and liquidated damages shall accrue for failing to meet any Critical Milestones. Contractor's failure to notify on a timely basis, the City of any Unavoidable Delay shall constitute a waiver of Contractor's right to claim an Unavoidable Delay subsequently. At anytime prior to approval of the revised Master Project Schedule, the City shall have the right to review and contest any claim by Contractor of the pertinent Unavoidable Delay.

(c) **Unavoidable Delays caused by City.** To the extent the City is the cause of an Unavoidable Delay, Contractor shall have the right to recover any reasonable costs actually incurred by the Contractor due to the Unavoidable Delay. Contractor agrees to take such reasonable steps necessary to mitigate its actual costs.

## ARTICLE 6

### DESIGN, COMMENCEMENT AND INSTALLATION OF PROJECT

#### Section 6.01. Design and Work Documents.

(a) **Detail Design.** Contractor shall submit to the City's Project Manager the Detail Design for the entire Project in accordance with the Master Project Schedule. The Detail Design shall address in more detail all areas addressed in the Preliminary Design. The Detail Design shall include, but not limited to, all individual facility floor plans, equipment layouts, equipment elevation drawings, equipment termination drawings, cabling drawings, and power routing information to a level of detail comparable to that provided to a construction contractor as a work package. The City will send written comments to the Contractor in accordance with the Master Project Schedule. Contractor shall incorporate such comments into the Detail Design, unless it believes that such comments go beyond the agreed upon Preliminary Design. In such event, Contractor must send written notice to the City specifying the areas that such comments deviate from the Preliminary Design. Upon receiving such notice from the Contractor, City must decide whether to require such changes or not. To the extent such changes are made, the parties will effectuate such changes through the Change Order process. Unless otherwise directed by the City's Project Manger, no work shall commence on the Project until the Detail Design has been approved. No changes requested by the City to Detail Design shall relieve the Contractor from its ultimate and absolute obligation to ensure that the Project meets or exceeds the Performance

Specifications and passes all aspects of the Acceptance Test Plan. Unless Contractor sends the written notice required above, any increased work or additional Equipment required due to the further detailing of the design shall not allow the Contractor to submit a Change Order.

(b) **Development of Statement of Work and Services.** The Parties acknowledge and agree that the Statement of Work and Services attached hereto is based on the Preliminary Design and further development of the Statement of Work and Services will be necessary prior to commencing the Project. Contractor shall deliver to the City's Project Manager the final Statement of Work and Services for the Project in accordance with the Master Project Schedule. The City will send written comments to the Contractor in accordance with the Master Project Schedule. Contractor shall incorporate such comments into the Statement of Work and Services, unless it believes that such comments go beyond the agreed upon Preliminary Design. In such event, Contractor must send written notice to the City specifying the areas that such comments deviate from the Preliminary Design. Upon receiving such notice from the Contractor, City must decide whether to require such changes or not. To the extent City desires to make such changes, the parties will effectuate such changes through the Change Order process. Unless otherwise directed by the City's Project Manager, no Work shall commence on the Project until the City's Project Manager has approved the final Statement of Work and Services. No changes requested by the City to the Statement of Work and Services shall relieve the Contractor from its ultimate and absolute obligation to ensure that the Project meets or exceeds the Performance Specifications and passes all aspects of the Acceptance Test Plan. Unless Contractor sends the written notice required above, any increased work or additional Equipment required due to the further detailing of the Statement of Work and Services shall not allow the Contractor to submit a Change Order.

(c) **Delivery and Installation of Project.** Contractor shall deliver and install the Project in accordance with the Detail Design and the Statement of Work and Services subject to Clarifications and Change Orders that may be issued by DTIS from time to time. Contractor acknowledges that the City's approval of Contractor's Preliminary Design submitted during the contract negotiations, the final Statement of Work and Services and the Detail Design do not relieve Contractor of its ultimate and absolute obligation to ensure that the Project meets all the Performance Specifications and passes all portions of the Acceptance Test Plan. Accordingly, Contractor acknowledges and understands that it may need to modify and change the scope of the Statement of Work and Services if the Project fails to meet any portion of the Performance Specifications or fails to pass any portion of the Acceptance Test Plan. All costs and expenses of any Equipment or Work necessary to meet or exceed the Performance Specifications and pass all aspects of the Acceptance Test Plan shall be borne solely by Contractor and will not increase the Project Price. (For procedure covering these modifications to the Statement of Work and Services, see Section 7.04 hereof.)

**Section 6.02. Clarification.**

(a) **Insufficient Information.** In the event the Statement of Work and Services does not adequately detail or explain the Work that needs to be performed, or should any questions arise as to the meaning or intent of the Statement of Work and Services, the City's Project Manager shall send to Contractor a Clarification. The Clarification shall not constitute a Change Order. The Project Price will not be adjusted due to any Clarification.

(b) **Beyond the Statement of Work and Services.** Should Contractor reasonably believe that any Clarification of the City's Project Manager exceeds the scope of the Statement of Work and Services, Contractor shall have the right to submit a written claim to DTIS within ten (10) days of receiving the Clarification. Notwithstanding the submission of the claim, Contractor shall proceed with the Work specified in the Clarification if so requested by DTIS. DTIS shall review any submitted claims to determine whether the Clarification exceeds the scope of the Statement of Work and Services. Contractor's failure to submit a written claim prior to commencing the Work contemplated by the Clarification shall constitute a waiver by Contractor of any claim either for added cost or for extension of time arising therefrom.

**Section 6.03. Change Orders.**

(a) From time to time, the City shall have the right to submit a Change Order to Contractor. Within ten (10) Days of receiving a proposed Change Order, Contractor shall submit to DTIS a written cost estimate, which shall include any adjustments to the Project Price, the Master Project Schedule, Acceptance Test Plan or other obligations of the Contractor, as applicable. Should an adjustment to the Project Price be necessary, Contractor shall base such adjustment on the prices and costs contained in the Project Cost Itemization Schedule, the Additional Equipment Price Schedule and Labor Rate Schedule. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from the General Manager. All Change Orders resulting in an increase in the Project Price must be pre-approved, in writing, by the Controller and the Purchaser. Contractor shall commence the Work contemplated by the Change Order in accordance with the Master Project Schedule upon receiving written notice from DTIS. Contractor must proceed with the work contemplated by the Change Order even if the Parties disagree on the effect that such Change Order will have on Project Price, Master Project Schedule or the Acceptance Test Plan, provided the City has delivered to Contractor a written statement of its good faith estimate of the fair value of the cost of Change Order and its effect on the Master Project Schedule and Acceptance Test Plan. In such instance, the City agrees, upon completion of the work, to pay the Contractor the amount of the good faith estimate and Contractor's sole remedy as to the additional amounts is to file a claim against the City or submit the matter to arbitration pursuant to the terms of the Master Agreement. Any changes to the Statement of Work and Services necessary to ensure that the Project will meet the Performance Specification and pass all aspect of

the Acceptance Test Plan will not be subject to this Change Order procedure. Such changes shall be made pursuant to Section 7.04 hereof.

**Section 6.04. Project Managers; Meetings; and Reports.**

(a) **Project Managers.** Contractor and City shall each designate a Project Manager, who shall be available on a 24-hour basis every day of the week. The City and Contractor shall maintain the Project Manager until the one-year anniversary of the Final Acceptance of the Project. The initial Project Managers shall be:

**CONTRACTOR: GEORGE NEWBY  
PAGER NO. 1 (800) SKYPAGE, NO. 33991**

**CITY: MITCHELL SUTTON  
PAGER NO. (415) 804-1115**

(b) **Qualifications.** The Contractor's Project Manager must be available on a 24-hour basis, seven days a week, after the Detail Design has been approved by the City. The Contractor's Project Manager shall have an office located in the City and County of San Francisco. During normal business hours, the Contractor's Project Manager shall be readily available to handle all Project related matters. The Contractor's Project Manager must live within eighty-five (85) miles of the boundaries of the City and County of San Francisco. The Contractor's Project Manager shall carry an activated pager at all times during the Project. Contractor's Project Manager shall have at least five years of experience in the installation and operation of the 800 MHz Trunked Radio Communication Systems and must have general knowledge of local governmental process, policy and procedures. The Contractor's Project Manager must also possess the ability and experience with government officials and public relations.

(c) **Changing Project Managers.** The City and Contractor shall use their best efforts to maintain the same Project Manager throughout the Project. However, if a party needs to replace its Project Manager, the party shall provide the other party written notice thereof at least fifteen (15) days prior to the date the Project Manager shall be replaced. Such notice shall provide all the required information above. DTIS shall have the right to require Contractor to replace any of its Project Managers by so notifying Contractor. Notwithstanding the foregoing, the parties have the right to appoint temporary Project Managers in connection with sick leave or reasonable vacations. Parties shall notify each other of any such temporary appointments.

(d) **Meetings.** From the commencement date of the Project until the Final Acceptance of the Project, the Project Managers shall meet on a weekly basis at such location and time designated by DTIS to discuss the progress of the Project. From the Final Acceptance of the

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Project until the first anniversary of the Final Acceptance of the Project, the City Project Manager may call monthly meetings to discuss any operational problems or defects that DTIS has encountered. DTIS shall have the right to call a meeting at any time by providing Contractor forty-eight (48) hours written notice thereof. Such notice shall provide the time, place and the purpose of the meeting.

(e) **Progress Reports.** On the first business day of each month during any ongoing Project, the Contractor's Project Manager shall submit a progress report to the City's Project Manager, reporting all the Work completed and all the Equipment delivered to the City the previous month. The Contractor's Project Manager shall state in the report whether all the scheduled deadlines for the previous month were met.

(f) **Management of Project.** The City's Project Manager shall have the right to manage and direct any aspect of the Project as may be necessary, in his or her opinion, to safeguard the interest of the City. Prior to taking any management action, the City's Project Manager shall make a reasonable attempt to communicate all his or her concerns to the Contractor's Project Manager. In the event Contractor believes that any direction being given by the City's Project Manager shall impair the performance of the Project or any Equipment thereof, Contractor shall immediately inform the General Manager of DTIS. Notwithstanding the ability of City's Project Manager to manage the Project, Contractor shall not be relieved of any of its obligations or liabilities under this Master Agreement.

(g) **Right to Inspect.** From the commencement date of any Project until the Final Acceptance of the Project, the City's Project Manager or any other City employee or agent designated by the City's Project Manager may enter any Contractor area or facility where any part of the Project or Equipment is being manufactured, assembled, staged, tested or installed to inspect the Project or Equipment; provided, however, Contractor shall have the right to restrict access if it reasonably determines that it will jeopardize any confidential or proprietary information. Any such visit shall be in accordance with all Contractor's policies, procedures and security measures. City shall provide Contractor forty-eight (48) written notice of an inspection of any Contractor facilities. No notice is required for any other inspection by the City. Contractor shall make all necessary arrangements to facilitate any inspection of the Project and Equipment.

(h) **Right to Stop Work.** Subject to Section 16.01(a), General Manager shall have the right to stop any work on the Project, or any portion thereof, if (i) Contractor fails to correct any defects in any work or Equipment, or (ii) Contractor fails to carry out any portion of the Project in accordance with this Master Agreement. All stop work orders from the City shall be in writing and signed by the General Manager. The City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall immediately cease working on that portion of the work specified in the order, until the cause for such order has been eliminated. The City's right to stop any work on the Project shall not give rise to a duty on the

part of the City to exercise this right for the benefit of Contractor or any other person or entity. In the event the General Manager orders work to be stopped without proper justification, City shall reimburse Contractor for the actual and direct costs incurred by Contractor due to the delay. Furthermore, the delay shall be considered to be an Unavoidable Delay.

**Section 6.05. Conditions to Commencement of Project.** Contractor shall not commence the manufacturing, installation or construction Project until all the following conditions have been met to the City's satisfaction:

(a) **Bonds.** DTIS has received evidence of the bonds required to be obtained by Contractor under Section 8.01 hereof.

(b) **Insurance.** DTIS has received the Certificates of Insurance required by Section 9.03.

(c) **Licenses, Approvals, etc.** Except as specified hereinafter or in the Statement of Work and Services, Contractor shall obtain all permits, licenses, authorizations and approvals for the commencement of the Project and all the related work, as required by any governmental bodies, agencies, commissions or departments having or claiming jurisdiction on the Project, including any permits, licenses, authorizations and approval required by any City department, agency or commission. In connection with any permits, licenses, or other documents required by the Federal Communication Commission ("FCC"), Federal Aviation Administration ("FAA") and California Aeronautical Division, the City shall be responsible for obtaining said licenses and permits; however, the Contractor shall complete all necessary forms for signature by the City. The City will then submit the form to the applicable governing body.

(d) **Request to Commence.** The City shall have delivered the initial Request to Commence.

(e) **Detail Design.** The City's Project Manager has approved the Detail Design for the Project, as set forth in Section 6.01 (a).

(f) **Statement of Work and Services.** The City's Project Manager has approved the Final Statement of Work and Services for the Project, as set forth in Section 6.01(b).

**Section 6.06. Staging and Preparation.** Contractor may stage, assemble, or prepare for the installation of, the Project at locations other than the specified installation Site. Contractor shall take full responsibility that all requirements of the Statement of Work and Services are met with respect to any staging, assembling, or preparation of the Project conducted outside the specified Site. Contractor shall confine all staging and operations at or near the Site to the areas permitted by law, ordinances, permits and this Master Agreement. Contractor shall not unreasonably encumber the Site with materials or Equipment. To the extent any portion of the Project is staged, assembled or prepared, outside of the boundaries of the City, Contractor shall

pay transportation, meal and lodging costs for up to four (4) individuals of the City. Contractor shall only pay for two (2) separate trips; each trip shall not be longer than five (5) days.

**Section 6.07. Sites.**

(a) **Site Access.** Unless approved in writing by the City's Project Manager, Site access will be limited for purposes of installation and testing of Equipment between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays. At least fourteen (14) days prior to any Work being performed at any Site, the Contractor shall submit a schedule of work activities to be performed at such Site. Unless approved in writing by the City's Project Manager, no night work in any City facility will be allowed between the hours of 4:01 p.m. and 6:59 a.m. Access to all Sites and systems must be coordinated and approved by the City's Project Manager even if these Sites are under the control of other City Departments or other agencies. No employee, agent and subcontractor of Contractor shall have the right to enter any Site or City facility until DTIS issues such person an identification card. Each authorized person shall maintain the card visible at all times while at any Site or DTIS facility.

(b) **Selection of Sites.** A list of all the Backbone Sites is set forth in the Statement of Work and Services.

(c) **Latent Conditions.** In the event that a Site does not meet normal soil conditions defined by Electronic Industries Association Standard RS-222 (latest revision) or should Contractor encounter latent subsurface or structural conditions at any Site differing from those indicated in the Statement of Work and Services, Contractor shall provide DTIS with immediate written notice of such conditions before they are further disturbed. Thereupon, Contractor and DTIS shall promptly investigate the conditions and, if found to be different, will adjust the plans, the Statement of Work and Services, the Master Project Schedule and the Project Price, as may be necessary, through the Change Order process. DTIS reserves the right to repair the Site or identify an alternative Site. In the event the additional cost are not covered by the Project Price, the amount payable under the Master Agreement shall not be in excess of the sum of the (i) the total cost of additional labor required to implement the change, and (ii) the total cost of additional Ancillary Equipment or material required due to Site change.

(d) **Changing or Reconfiguring Inadequate Sites.** Should Contractor or DTIS determine that the Sites or configurations selected for the 800 MHz Project will not meet the Performance Specifications or pass the Acceptance Test Plan, DTIS and Contractor shall select a new or replacement site or reconfigure the Site in question based on the following parameters: (i) not degrade or alter any of the existing operational capability, grade of service, reliability factor, or any installed function of the Project; and (ii) be based on proven radio propagation, actual radio coverage, and feasibility and availability studies. All additional costs and expenses incurred due to a change in Site shall be borne solely by Contractor. No adjustment shall be made to the Project Price due to such change.



(e) **Unavailable Sites.** In the event DTIS determines, for any reason, that a proposed Site contained in the Statement of Work and Services is no longer available or desirable, DTIS shall notify the Contractor of the unavailability of the Site and provide a list of alternative sites. Within fifteen (15) days of receiving such notice, Contractor shall notify DTIS of the Site that it desires to use for the Project. In such notice, Contractor shall provide a revised Statement of Work and Services. If necessary, Contractor shall also inform DTIS of any necessary adjustment to the Project Price and the Master Project Schedule. The price adjustment due to the Site change shall not exceed the sum of (i) the total price of additional labor required to implement the change and (ii) the total price of any additional Equipment or material necessary to implement the Site change. The foregoing process shall occur pursuant to the Change Order process.

(f) **Additional Sites.** If additional Sites are necessary for the Project to meet the Performance Specifications or pass all portions of the Acceptance Test Plan, Contractor shall be charged with the responsibility of finding such Sites and must pay all costs and expenses necessary to obtain such Sites for the Project. Contractor shall ensure that additional Sites remain available to the City so long as the City is using the Project. All additional cost and expenses (including any lease or acquisition costs) for any new additional Site shall be borne solely by the Contractor.

**Section 6.08. Security.** Contractor shall be responsible for the security of any City facilities and any Site when Contractor personnel or subcontracts are present. Contractor's responsibility shall include the obligation of securing the Site during and at the end of each working period. The cost of such security is included as part of the Project Price, and the City is not liable for any additional costs.

**Section 6.09. Deliveries.**

(a) **Location and Time.** Contractor shall deliver all Equipment and material at the locations specified by the City's Project Manager. All deliveries shall be made between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays. Contractor shall not deliver any Equipment or material to any Site until such Equipment is ready to be installed at such Site and the City's Project Manager approves such delivery. The City shall not accept any deliveries unless Contractor is ready to begin installation. All Equipment shall be fully tested and certified to be operational prior to delivery to any installation Site.

(b) **Manner of Shipment.** All Equipment shall be packaged and crated in a manner to protect it from damage, including, but not limited to, abrasions, moisture and corrosion. All Equipment shall be labeled or stenciled showing contents and serial numbers, if any. All shipments shall be accompanied by a packing slip indicating items shipped. All Equipment, including subassemblies, modules, cards, parts, and any other Equipment, shall be shipped and

delivered with a Universal Product Code ("UPC") or other industry standard bar code format. The bar code shall identify the part number and serial number of the Equipment, or parts thereof.

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(c) **Title; Risk of Loss.** All User Equipment shall be shipped by Contractor F.O.B., to the designated delivery site in San Francisco, California, in accordance with the applicable shipping instructions. If a delay has occurred beyond the designated delivery date, Contractor shall provide reasonable notice to the City as to the new delivery date. Title to the User Equipment and risk of loss shall pass to the City upon the certification of the City's Project Manager that all the Equipment has been delivered. In connection with any Fixed Network Equipment, title shall pass upon certification of City's Project Manager that such Equipment has been installed; however, risk of loss for such Equipment and related material shall not pass to the City until Final Acceptance of the Project. Notwithstanding the foregoing, no title shall pass with respect to any Software being licensed to the City.

(d) **Inventory.** Contractor and the City shall each inventory all Equipment and material when delivered to an installation Site. Any discrepancies between the inventory lists shall be immediately resolved. A joint inventory list shall be prepared and maintained throughout the Project.

(e) **Storage.** No City facility or installation Site shall be used for storing any Equipment or material. At its sole cost, Contractor may obtain a local receiving/storage facility. Contractor shall not bill the City for any such storage costs unless the General Manager gives Contractor specific written direction to store the Equipment or Material.

**Section 6.10. Emergency Work.** At any time during the Project, the City shall have the right to make any emergency repairs or correction to any portion of the Project if (i) the City has first attempted to contact Contractor, and no one from Contractor is able to respond within four (4) hours of the call or (ii) such action is necessary in the interest of public safety. Contractor shall reimburse the City for all costs incurred by the City in connection with such actions taken. City may elect to offset any amounts owed against any future payment to Contractor.

**Section 6.11. Existing Systems and Equipment.**

(a) **Due Care.** Contractor shall take all advisable precautions to protect all existing equipment, facility and structure in any area in which Contractor is assembling or installing any portion of the Project. Contractor shall take particular care to configure and install mounting hardware so as not to cause damage to existing structures. Contractor shall be responsible for correcting any damage they may cause to any equipment, facility and structure to the condition prior to the time of damage. After the completion of the installation Work at a facility or Site, the Contractor shall be responsible for restoring the facility or Site to its original condition.

(b) **Interruption of Service.** Contractor shall ensure that no unscheduled interruption of service of the existing communications systems shall occur during the course of installation, testing, maintenance or servicing of the Project. If service or any part of service must be interrupted to install any part of the Project, Contractor shall schedule with the City's Project Manager times when service may be interrupted. The Project Manager must supervise all service interruptions. If any interruption of service occurs, Contractor must fully restore the existing system and ensure that the system is not degraded by the interruption. Should an unscheduled interruption of the system occur and last for longer than one (1) hour, the City's Project Manager may hire such experts, engineers or other individuals that the City's Project Manager believe are necessary to restore the existing system. Contractor shall reimburse the City for all costs and expenses incurred in hiring such individuals. The City shall have the right to offset such cost and expenses against future payments to the Contractor.

(c) **Modified Equipment or Systems.** Contractor shall be responsible for correction of deficiencies in any City or non-City equipment (which may prevent the Project from performing according to the Performance Specifications) which interfaces with or Contractor modifies as part of the Project.

(d) **Equipment Removal.** All existing equipment being replaced shall be removed and delivered to such location designated by the City's Project Manager.

#### **Section 6.12. Subcontractors.**

(a) **Form and Submission of Agreements.** Prior to subcontracting any portion of the Project, City must preapprove such subcontractor. All subcontracts shall be consistent with the terms and conditions of this Master Agreement. All subcontracts must separately state the amount the subcontractor is receiving and the amount the Contractor is receiving for managing the subcontractor. Prior to any subcontractor commencing on any work for the Project, Contractor shall provide the City a copy of the fully executed subcontract agreement. City shall not be liable for any amounts owed under any subcontract until such contract is approved by the City. The Contractor's management fee shall not be grounds for rejection of a subcontractor or subcontract.

(b) **Contractor Remains Obligated to Perform Work.** Notwithstanding the City's approval of any subcontract, Contractor shall remain fully responsible to perform all the work contemplated by the subcontract. Furthermore, Contractor shall supervise, coordinate, and perform all work performed by the subcontractor. No subcontract shall bind or purport to bind the City. Contractor shall be solely liable and responsible for any and all payments and other compensation to all subcontractors and their officers, employees, agents, and independent contractors.

**Section 6.13. Cooperation and Coordination with Other Work.** Contractor shall cooperate with all other contractors and workmen who may be employed by the City in the vicinity of the Project. Contractor shall conduct its operations so that it does not interfere with the contractors or workmen. Any difference or conflict that may arise between Contractor and other contractors or between Contractor and the workmen of the City in regard to their work, shall be adjusted and determined by DTIS. DTIS can request Contractor to suspend any part of its work or modify its work if necessary to facilitate the work of other contractors or workmen. In the event of such suspension or modification, Contractor shall have the right to make any claim for direct and actual costs incurred thereby. In addition, DTIS shall grant Contractor an extension of time in an amount equal to the period of delay caused by the incident. Any claim for cost or extension of time shall occur pursuant to the Change Order provisions herein.

**Section 6.14. Conduct Of Parties.** While on the premises of any other agency other than the City, Contractor shall comply with all rules and regulations of such agency, including all security requirements.

**Section 6.15. Barricades, Warning Signs and Lighting.** At all Sites and facilities where the Project is being installed, Contractor shall take all precautions necessary to protect the public and provide maximum safety for City operations. Contractor shall provide for the safe and proper routing of vehicular and pedestrian traffic in a manner that will minimize congestion and delay thereof. Contractor shall furnish, install and maintain all temporary signs, lights, barricades, cones, guard rail, runways, pavement, bridges, stairs, and other devices and facilities necessary to safeguard the general public and the Project. Such devices and facilities shall be relocated as necessary to accomplish the proper routing of traffic as the Project progresses. Upon conclusion of the need of such devices, Contractor shall remove them from the Site or facility.

**Section 6.16. Independent Contractor; Payment of Taxes and Other Expenses.**

(a) Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Master Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. Terms in this Master Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only and not as to the means by which such result is obtained.

(b) Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Master Agreement shall be reduced by amounts equal to both the employee

and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). The City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for the City, upon notification of such fact by the City, Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to Contractor under this Master Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Master Agreement, Contractor shall not be considered an employee of the City.

## ARTICLE 7

### INSPECTIONS, TESTING, AND ACCEPTANCE

#### Section 7.01. Acceptance Test Plans and Inspections.

(a) **Acceptance Test Plans.** The Contractor has prepared a general Acceptance Test Plan for testing the components of the Project, individually and collectively, which plan is attached hereto as Exhibit F. At least thirty (30) days prior to any Acceptance Test Plan procedure being implemented, the Contractor shall deliver to the City a more detailed acceptance test procedure which is consistent with the general Acceptance Test Plan attached hereto as Exhibit F and the Performance Specifications. All submitted Acceptance Test Plan procedure must be approved, in writing, by the City's Project Manager prior to any portion of such plan being implemented. Prior to the City's approval, the City shall have the right to modify the submitted plans and to add additional test requirements that verify compliance with the Performance Specifications.

(b) **Right to Inspect all Aspects of Project.** The City's Project Manager shall have the right to inspect and/or test, at any time all work, Equipment and materials to be provided for the Project, and the manufacture, assembly and installation of such Equipment and material, provided that the City gives reasonable notice and agrees to abide by reasonable restrictions regarding access to areas containing Contractor's proprietary and confidential information. The City's Project Manager inspection shall be based on compliance with (1) the Statement of Work and Services (2) Performance Specifications and (3) Acceptance Test Plan. The right of City's Project Manager's to inspect all aspect of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Master Agreement. The City's Project Manager may reject any portion of the Project failing to meet any applicable standard.

(c) **Defects Post-Inspection.** Notwithstanding any previous inspection or acceptance of payment by the City for any Work, Equipment or material found to be in noncompliance with the Statement of Work and Services, Performance Specifications or the Acceptance Test Plan or is

defective before Final Acceptance of the Project, shall be repaired or replaced immediately by Contractor at its own cost and expense.

(d) **Special Testing Tools.** Whenever required by the Statement of Work and Services, Contractor shall furnish all tools, labor and material necessary to inspect any Equipment, work or material. Unless purchased by the City as part of the Project, Contractor shall provide all test Equipment needed to verify any Equipment, Site, or Project at its sole cost and expense. Test Equipment provided by Contractor for performance test shall be currently certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent. Unless purchased by the City, all test Equipment shall remain the property of Contractor.

(e) **Closing of Uninspected Work.** Contractor shall not cover, or allow to be covered, any work before it has been approved by the Project Manager. Should any of the work be covered prior to such approval, the City's Project Manager shall have the authority to require the work to be uncovered for inspection and recovered after it has been approved. Any damage caused by having to uncover the finished work shall be repaired or replaced by Contractor at its sole cost and expense.

(f) **Equipment Assembled Outside of City Limits.** Subject to the provisions of Section 6.04(g), the City may inspect, at its expense, any Equipment being assembled outside of the boundaries of the City at the location that such Equipment is being assembled.

#### **Section 7.02. Performance Test Procedure and Inspection.**

(a) **Notice of Completion, Testing and Inspection.** Whenever any portion of the Project is complete and ready for testing (other than Final Acceptance testing), Contractor shall send written notice to the City. Upon receipt of such notice, City and Contractor shall set certain times and dates for testing such portion of the Project. In connection with any test or inspection, Contractor shall provide all necessary testing equipment and any of its personnel necessary for such test or inspection. Contractor shall notify the City's Project Manager of any test at least seven (7) days prior to the test. Such notification shall include the following information: (1) test date and time, (2) test type, (3) location, (4) Contractor's test personnel and (5) proposed test procedures. Contractor and DTIS shall perform the performance test according to the Acceptance Test Plan. Contractor and DTIS shall inspect the Equipment, Site or Project to ensure that it meets the Statement of Work and Services and the Performance Specifications. The City may, with good cause, require the Contractor to rerun any tests that produce a negative or inconclusive result, and such test shall also be at the cost of the Contractor. If the particular portion of the Project being tested or inspected either (1) fails to pass any portion of the Acceptance Test Plan or (2) does not meet the requirements in the Statement of Work and Services or the Performance Specifications, Contractor shall prepare a report, listing all the deficiencies, corrections that need to be made to the Project and the timeline for implementation of such corrections, which timeline shall not affect the Master Project Schedule. Within ten (10)

days of the test, Contractor shall deliver the report to the Project Manager for review and approval. Once the report is approved by the City's Project Manager, Contractor shall implement all the corrective measures and replace any defective Equipment. Upon completing all such steps, Contractor shall arrange with DTIS a mutually acceptable time and location for retesting the Project. In the event DTIS rejects any portion of the Project twice, DTIS may request Contractor to remove the rejected portion at Contractor's expense. Contractor shall be obligated to restore the premises to its original condition. If possible, DTIS may obtain that portion of the Project from another manufacturer and Contractor shall be liable for such procurement costs. Should Contractor fail to make any necessary corrections promptly or should the exigency of the situation require immediate repairs before Contractor can be notified, the City shall have the right to make the necessary repairs or replacements at the expense of Contractor.

(b) **Removal of Rejected Portions.** After any portion of the Project has been rejected twice, the City shall have the right to require the Contractor to remove the rejected items, by sending a written notice to Contractor. If Contractor fails to do so within five (5) days after such notice, the rejected item may be removed and stored by DTIS. The cost of removal and storage shall be charged to Contractor and deducted from the next payment to Contractor.

(c) **Use Not Acceptance.** Until Final Acceptance of the Project, the operation or use of any portion of the Project by the City whether for business, testing, profit, revenue or any other purpose, shall not constitute acceptance by the City of that portion of the Project.

(d) **Final Acceptance Testing.** When the Project as a whole is complete and ready for Final Acceptance testing, Contractor shall send written notice thereof to the City. Upon receipt of such notice, Contractor and DTIS shall establish certain dates and times for such test, which dates must be within fifteen (15) to thirty (30) days from the receipt date of the Contractor's notice. Should the City be unprepared to conduct such test within such time period, the warranties specified in Article 15 shall commence thirty (30) days from the receipt of the Contractor's notice to the City unless the Project fails to pass all aspects of the Final Acceptance testing. In the event the Project as a whole fails to pass the Final Acceptance tests as defined in the ATP when such tests are eventually performed, then the warranties shall commence on date of Final Acceptance of the Project.

**Section 7.03 Reliability Period.** The Reliability Period shall begin immediately after System Cutover of all user departments and shall continue for a period of ninety (90) days. If, during the Reliability Period, (1) the Project suffers a Major Failure prior to Final Project Acceptance, caused in whole or part by Contractor, Subcontractor's, or its Equipment, then Contractor shall remedy such failure and a new ninety (90) day Reliability Period shall begin only for the specific system or subsystem(s) (identified as one of the systems or subsystems under the definition of Major Failure that has failed or (2) any of the major systems or subsystems identified in the definition of Major Failure suffers a Chronic Failure prior to Final Project Acceptance, even if such failure does not create a Major Failure as defined, then Contractor shall

Appendix 4

Amendment 4

remedy such failure and a new ninety (90) day Reliability Period shall begin only for that specific system or subsystem which suffered such Chronic Failure (collectively the "Extended Reliability Period"); provided, however, in the event any system or subsystem failure is remedied, an Extended Reliability Period shall apply for such impacted systems or subsystems. In the event of extensive Major Failure or Chronic Failures the City may request after Contractor's remedy of such failure, re-testing such system or subsystems, and the Reliability Period for the Project re-start. Nothing herein shall be deemed to lessen Contractors responsibility for providing a fully functional Project upon Final Project Acceptance.

**Section 7.04. Equipment or Work That Complies With Statement of Work and Services But Fails to Meet the Performance Specifications or the Acceptance Test Plans.**

Contractor acknowledges and accepts that the City's approval of the Preliminary Design, the Detail Design and the final Statement of Work and Services does not relieve the Contractor from its ultimate and absolute obligation to ensure that the Project meets all aspects of the Performance Specifications and passes all portions of the Acceptance Test Plan. Contractor acknowledges that it is not sufficient to deliver the Project in accordance with the Statement of Work and Services and the Detail Design. Should any portions of the Project fail to meet the Performance Specifications or fail to pass any aspect of the Acceptance Test Plan, Contractor shall modify and revise the Statement of Work and Services in the manner necessary to meet the Performance Specifications and pass the Acceptance Test Plan. All proposed revisions to the Statement of Work and Services shall be submitted to the City's Project Manager. The City's Project Manager shall have the right to reject any proposed change that the City's Project Manager believes poses an unreasonable burden on the City. Such rejection shall not relieve Contractor from its obligation to meet the Performance Specifications and the Acceptance Test Plan. Contractor acknowledges and accepts that all cost and expenses to ensure the Project meets the Performance Specifications and passes all aspects of the Acceptance Test Plan shall be borne solely by the Contractor and will not increase the Project Price.

**ARTICLE 8**

**PERFORMANCE, LABOR AND MATERIAL BOND**

**Section 8.01. Security for Performance and Payment.**

**(a) Type of Bonds.**

(1) **Performance Bond.** From the commencement of the Project until Final Acceptance of the Project, Contractor shall obtain and maintain in full force and effect a performance bond in an amount equal to the Project Price, as adjusted from time to time, to secure Contractor's faithful performance of all the terms and conditions under this Master Agreement, as such terms and conditions pertain to the Project. Contractor shall deliver the performance bond to the City prior to the commencement of any work on the Project. To the



extent the City elects to acquire one or both of the Optional Phases, the Contractor shall increase the Performance Bond by an amount equal to the increase in the Project Price. Such Bond must be delivered prior to the commencement of work on the Optional Phase.

(2) **Payment Bond**. From the commencement of the Project until Final Acceptance of the Project, Contractor shall obtain and maintain in full force and effect a payment bond in an amount equal to the Project Price, as adjusted from time to time, to secure Contractor's obligation to pay any subcontractors, materialman or laborers who perform any work or provide any material for the Project. Contractor shall deliver the payment bond to the City prior to the commencement of any work on the Project. To the extent the City elects to acquire one or both of the Optional Phases, the Contractor shall increase the Payment Bond by an amount equal to the increase in the Project Price. Such Bond must be delivered prior to the commencement of work on the Optional Phase.

(3) **Fidelity Bond**. At the request of the General Manager, from the commencement of the installation of the Project until Final Acceptance of the Project, Contractor shall obtain and maintain in full force and effect a blanket fidelity bond covering all officers, employees and subcontractors, in an amount not less than \$100,000, with any deductible not to exceed \$1,000, including City and owners/tenants of premises where Contractor is installing the Project, as additional obligees or loss payees as their interest may appear.

(b) **Form of Bonds**. All bonds must be in form of coverage and issued by companies that are acceptable to the City.

## ARTICLE 9

### INSURANCE

**Section 9.01. Insurance**. Contractor shall obtain, pay for, and maintain in full force and effect during the term of this Master Agreement insurance as follows:

(a) Workers' compensation, including employers' liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident, including occupational disease coverage, with a limit of One Million Dollars (\$1,000,000) per person subject to an aggregate limit of One Million Dollars (\$1,000,000) per annum;

(b) Commercial general liability insurance with limits not less than Twenty Million Dollars (\$20,000,000) combined single limit bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage;

(c) Business automobile liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit of liability for bodily injury, and property damage, including owned and non-owned and hired automobile coverage, as applicable;

(d) Builders risk or equipment installation insurance, or an all-risk form, including coverages for earthquake and flood, for 100% of the replacement value of all materials, equipment and supplies which are part of the completed project, including coverage in storage and in transit, with any deductible not to exceed Twenty-five Thousand Dollars (\$25,000) each loss (2% earthquake or flood deductible).

(e) At the request of the General Manager, Contractor shall maintain, or cause to be maintained by subcontractor, consultants or others, the following insurance, as deemed appropriate by the General Manager:

- (1) Professional liability insurance for negligent acts, errors or omissions with respect to architectural, engineering or other professional or technical services required in the performance of this Master Agreement, with limits not less than Ten Million Dollars (\$10,000,000) each claim and annual aggregate and any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) each claim.

To the extent the City elects to require the Contractor to carry the insurance specified in (e)(1) above, the City shall pay an additional amount not to exceed Two Hundred Ninety Thousand Dollars (\$290,000) for the Professional Liability Insurance. The above amounts payable are over and above the Project Price and are payable immediately.

**Section 9.02. Claims Made Coverage.** To the extent any insurance coverage required under this Section is purchased on a "claims-made" basis, after the term of this Master Agreement begins, such insurance shall cover all acts of Contractor during the term of this Master Agreement, and such insurance shall be continuously maintained until at least three (3) years beyond the expiration or termination of this Master Agreement, or Contractor shall purchase "tail" coverage, effective upon termination of any such policy or upon termination or expiration of this Master Agreement, to provide coverage for at least three (3) years from the expiration or termination of this Master Agreement.

**Section 9.03. Certificates of Insurance.** Certificates of Insurance, in form and with insurers acceptable to City, evidencing all coverage described in Section 9.01, shall be furnished to the City prior to the execution of this Master Agreement. The Certificates of Insurance shall provide that: (i) the City and County of San Francisco, its officers, agents, and employees are additional insureds (required for General Liability and Automobile Liability only); (ii) each policy is primary insurance with respect to any other insurance available to City as to any claim

for which coverage is afforded under the policy; (iii) except for limits of liability, the policy apply separately to each insured against whom a claim is made or suit is brought (required for General Liability and Automobile Liability only) and (iv) state a deductible to the extent an amount is specified in Section 9.01 hereof.

**Section 9.04. Cancellation Or Lapse of Insurance.** All insurance required under this Master Agreement shall contain an endorsement requiring thirty (30) days prior written notice from the insurance company to City of cancellation, non-renewal, change in coverage, scope, or amount of any policy. Should Contractor fail to keep in effect at all times the insurance coverage required under Section 9.01, City may, in addition to and cumulative of any other remedies available at law, equity, or hereunder withhold payments to Contractor required under this Master Agreement in any amount sufficient to procure the insurance required herein.

**Section 9.05. Other Insurance Requirements.** All insurance policies required hereunder must be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least an A-, VIII status as related in the most recent edition of Best's Insurance Reports. Upon written request by City, Contractor will provide to City policy extracts and policy form numbers to clarify an insurance certificate or as otherwise needed in the course of City's business activities.

**Section 9.06. Subcontractors.** To the extent that Contractor subcontracts any work, Contractor shall require such subcontractors to name the City and County of San Francisco, its officers, agents and employees as additional insured on all insurance policies carried by such subcontractors.

## ARTICLE 10

### INDEMNIFICATION

**Section 10.01. General Indemnity.** Contractor, on behalf of itself and its successors and assigns, shall hold harmless and indemnify the City, and its Related Parties, from and against any Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (i) any accident, injury to or death of any person, or loss of or damage to any property, caused, in whole or part, by Contractor, its employees, subcontractors, agents or invitees in the course of installing, testing, maintaining or servicing any portion of the Project; (ii) any accident, injury to or death of any person, or loss of or damage to any property, in the course of performing any of its obligations under this Master Agreement; and (iii) any negligent or willful act or omission of Contractor, employees, subcontractors, its agents or invitees. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Contractor by

City and continues at all times thereafter. Contractor's obligations under this Section are irrevocable and shall survive the expiration or termination of this Master Agreement. The City shall provide Contractor with such information Contractor needs to defend any action.

**Section 10.02. Indemnity re Copyright, Patent, Trademark, Infringement.**

Contractor, on behalf of itself and its successors and assigns, shall hold harmless and indemnify the City and its Related Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (i) any claim or action, alleging that the Project, or portion thereof, infringes upon or otherwise violates any United States copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure agreement, or other rights of any third party; or (ii) a breach of any of the representations or warranties set forth in Section 15.03 hereof. Contractor's obligations under this Section are irrevocable and shall survive termination or expiration of this Master Agreement. If any Equipment or Software of the Project is held to constitute an infringement and the use thereof is enjoined, Contractor shall immediately, at Contractor's expense, and at the City's option either (i) procure for City the right to continue to use the Software or (ii) modify the Software so that it becomes non-infringing, while maintaining the same form, fit, function and quality or (iii) replace the Project or portions thereof so that it becomes non-infringing, (iv) remove the Project or portions thereof and refund the applicable amount of the Project Price or (v) substitute an equivalent product or products reasonably acceptable to City. The City agrees to provide Contractor with such information necessary to defend any action.

**ARTICLE 11**

**SOFTWARE**

**Section 11.01. Licenses.** Prior to the delivery of any portion of the Project that includes Software, Contractor shall identify such software and request the City to execute a License Agreement in substantially the form attached hereto as Exhibit J ("License"). All Licenses shall commence upon their execution and remain in effect until expressly terminated by the City. The expiration or termination of this Master Agreement shall not cause the termination of any executed License.

**Section 11.02. No Additional Payments.** Contractor hereby represents and covenants that the Project Price includes any and all fees and claims for royalties or other amounts that may be due to the Contractor or any third party for the Contractor or such third party's patent, trademark, copyright, trade secret, invention or other proprietary right or intellectual property right. Evidence of payment (or satisfaction) of royalties and other amounts in connection with the foregoing shall be submitted, upon request of the General Manager, as a necessary requirement in connection with the final estimate for payment for components in which such intellectual property rights are used. The City shall not make any additional license payments,

renewal payments, annual payments or maintenance and support payments for any Software for the Project.

**Section 11.03. Warranties.** Contractor hereby represents and warrants that it has full authority and right to provide to the City all the Software for the Project, and that the City shall have the unfettered, unconditional, perpetual right to use all such Software as part of the Project.

**Section 11.04. Source Code.** After the execution of any License and at the written request of the City, Contractor shall deposit one (1) copy of the source code into escrow, together with all applicable material. The form of Escrow Agreement is attached hereto as Exhibit K ("Escrow Agreement"). Contractor shall deliver one (1) copy of all updates, enhancements and releases into escrow prior to, or at the time such updates, enhancements and releases are provided to the City and otherwise insure that the source code(s) in escrow are identical to those of the Software being used by the City. Contractor shall provide an annual statement by the escrow holder of the contents of the escrow. In the event that the parties enter into an Escrow Agreement, such agreement shall be assignable by the City to the Financial Trustee, the Corporation or any other third party subject to and as provided in Section 11.06. The cost of such escrow shall be borne by Contractor.

**Section 11.05. Other Codes.** Concurrent with the execution of any License for any delivered Software, Contractor shall deliver to the City all instruction codes for the delivered Software Code.

**Section 11.06. Assignable.**

(a) **Consent Required.** With the prior written consent of Contractor, the City shall have the right to assign all Licenses to any third party. Contractor shall not unreasonably withhold its consent.

(b) **Consent for Assignment to Corporation and Financial Trustee.** City hereby represents to Contractor that the City intends to finance the Project with governmental securities secured by certain lease payments of the City. In connection with the financing, certain assignments of the Licenses between the City, the Corporation and the Financial Trustee will be necessary for the financing (collectively "**Financing Assignments**"). To allow the City to accomplish the proposed financing, Contractor hereby irrevocably consents to all the Financing Assignments.

(c) **Consent for Third Party Users.** In the event of a default on any of the governmental securities issued, in whole or in part, to finance the Project, Contractor hereby irrevocably consents to the assignment of all the Licenses to any other user of similar Projects or Equipment; provided that the user is not a direct competitor of Contractor in the 800 MHz trunked radio communication system business.

**Section 11.07. Conflicting Provisions.** Notwithstanding anything to the contrary in this Master Agreement, all terms and conditions of Article 11, Section 10.02 and Section 15.03 of this Master Agreement shall control over any conflicting or inconsistent provision of any executed License or Escrow Agreement.

**Section 11.08. Disclaimer of Patent License.** Nothing contained in this Master Agreement shall be deemed to grant, either directly or by implication, estoppel, or otherwise, any license under any patents or patent applications of Contractor, except that City shall have the normal non-exclusive royalty-free license to use that is implied, or otherwise arises by operation of law, in the sale of a product.

**Section 11.09. 2000 Compliant.** All Equipment supplied under this Master Agreement, individually and in combination, shall automatically and successfully transition into the year 2000 with the correct system date, including any leap year calculations. All Equipment supplied under this Master Agreement, individually and in combination, shall provide correct results when moving forward or backward in time through and beyond January 1, 2000. This requirement shall apply to any embedded technology, including, but not limited to information processing technology embedded in any Equipment that contributes to the Equipment's functionality by tracking, recording or displaying a system date. Contractor will fulfill its obligation hereunder pursuant to Section 8 of the License.

## ARTICLE 12

### TRAINING AND SUPPORT

**Section 12.01. Training.**

(a) **Project Training.** In connection with the Project and prior to Final Acceptance of the Project, Contractor shall provide the City training in the manner and in accordance with Exhibit L attached hereto.

(b) **Training Seminars.** In addition to the training classes described in subsection (a) above, Contractor shall provide technical training seminars for DTIS Radio Service Shop Supervisor(s) and any other staff specified by the City's Project Manager or the General Manager, dealing in efficient and safe procedure of managing a Radio Service Shop including handling and servicing practices for electrostatic discharge sensitive radios and Equipment, and demonstration of Contractor's Service Depot Facility. The training seminars shall include, but not limited to, the use of Automatic Test Equipment (ATE) for "go/no go" test and repair criterion and procedures applicable to trunked portable and mobile radios.

(c) **Additional Training Classes and Seminars.** In addition to the training classes described in subsections (a) and (b) above, Contractor shall provide additional training to and for any City staff, as may be required, in operating, maintenance, support, and managing the Project when so requested by the City. Contractor shall further invite the General Manager, the City's Project Manager and the DTIS personnel responsible for the Project to any technical class, seminar or show relating to any current or upcoming products related to the Project, including any changes or technological development that affect the Project. All transportation, meals and lodging incurred by any DTIS personnel attending the class, seminar or show shall be borne by the City.

## ARTICLE 13

### DOCUMENTATION FOR PROJECT

**Section 13.01. Delivery of Documentation.** Prior to the Final Acceptance of the Project, Contractor shall provide all the documents listed below:

(a) **General Requirements.** Contractor shall provide all the documentation specified in the Statement of Work and Services and Appendix B of the Performance Specifications.

(b) **Operator's Manual.** Contractor shall deliver to the City six (6) copies of the Operator's Manual for each different model of Equipment incorporated into the Project. Each of these manuals must include a complete description of the use of the particular Equipment and Project features. The manuals shall be written in easily comprehensible laymen's language for use by operations personnel.

(c) **"As Builts."** Contractor shall deliver to the City six (6) complete sets in hard printed copy and one (1) copy of the printed documentation in magnetic media of the "as built" documentation. The hard printed copy documentation shall be contained in three-ring binders for each different model of Equipment or off-the-shelf Equipment for the Project. The magnetic media "as built" documentation shall be submitted in 1.44 MB floppy diskette(s) formatted by MS-DOS. The documentation file format for drawings and schematics shall be done, exported, or translated to AutoCADD drawing files. The documentation file format for Equipment listings, unit pricing and other database documentation shall be done, exported, or translated to Microsoft Excel files. Instruction and maintenance manuals for any Equipment, identifiable by a Manufacturer Part Number, Index Code, or any other cross reference markings, may be supplied as published and need not be duplicated by magnetic media. Contractor may lock magnetic media files as "read only" files contained within the instruction or maintenance manuals that Contractor considers confidential. Each set for the Project, each major subsystem, each major circuit and each printed circuit, shall include the following information: (i) preventative and corrective maintenance, troubleshooting and overhaul procedures; (ii) complete "as built" containing mechanical, electronic and electrical engineering drawings, panel layout drawings,

physical Project layout drawings and schematic drawings; (iii) block and level one-line Project drawings, cross-connect tables, power and signal cable run drawings showing termination for each segment, with indicated normal voltage readings and levels; (iv) theory of operation, pictorial parts layout and parts lists; and (v) adjustments, tuning and alignment procedures.

(d) **Documentation for Custom Installation**. Contractor shall deliver to the City six (6) copies of the technical documentation of any custom installation, such as, routing of lines within Equipment cabinets, between Equipment cabinets and cables in the control consoles. This documentation shall be used by City technicians to maintain, modify and install the Equipment. This documentation shall consist of text and drawings sufficient to permit analysis of troubles and identification of defective components. The drawings shall have several degrees of increasing detail so as to enable the technician to move in logical steps from the broad overall view of the Project to the component level. References shall be shown on each drawing so as to lead forward to the next level of greater detail and backward to the less detailed and more inclusive drawings. All drawings at a given level of detail shall be in the same format and show termination which can be followed to related drawings at the same level. Each drawing shall have a title which can be found on a block in the next larger diagram and be identified with a number, which shall, where appropriate, indicate revisions. Numbers of related drawings shall be shown where needed. The drawings shall show interconnects (terminal by terminal) within the Project and, where possible, to related Equipment.

## ARTICLE 14

### PARTS, MAINTENANCE AND REPAIRS

#### Section 14.01. **Replacement Parts**.

(a) **Availability**. From the date of installation of each portion of the Project until the tenth (10th) anniversary of the Final Acceptance of the Project, Contractor shall use best efforts to maintain all replacement parts for all Equipment and components for the Project, which are manufactured by Contractor. Contractor shall use best efforts to ensure that compatible equipment that supports the expansion and/or enhancements of the Project until the tenth (10th) anniversary of the Final Acceptance of the Project is available to the City. In the event that Contractor can no longer stock any parts used in the Project, Contractor shall immediately send written notice thereof to the City. If Contractor decides to discontinue manufacturing subassemblies, modules, boards, frames, software or the model series equipment provided and installed for the Project, Contractor shall notify the City and shall provide the City with a reasonable amount of time to order and purchase the items before the Contractor ceases production of these items.



(b) **Part Orders.** All parts Equipment manufactured by Contractor shall be available, if in stock, within twenty-four (24) hours after placement of an order. Every day of the year Contractor shall provide 24-hour ordering facilities by telephone and cable service.

#### **Section 14.02. Maintenance and Repairs.**

(a) **Initial Maintenance and Repairs.** From installation of the Project until the Final Acceptance of the Project, Contractor shall provide 24-hour, seven (7) days-per-week maintenance and repair services for the entire Project. Every day of the year Contractor shall provide 24-hour toll-free telephone consultation serviced for maintenance and repair. Contractor shall respond to all maintenance and services request within four (4) hours of receiving a request for service from DTIS if so requested by DTIS. On the Final Acceptance of the Project and thereafter, DTIS shall assume all maintenance and repair responsibility. If requested by DTIS, Contractor shall immediately respond to any emergency repair on the Project. Contractor shall submit a recommended preventive maintenance program that ensures reliable system operation, identifying specific system and equipment, maintenance intervals and required specialized test equipment.

(b) **Maintenance and Repair Consultation.** From installation of any portion of the Project until the first (1st) anniversary of the Final Acceptance of the Project, Contractor's personnel shall be available for consultation at any Site, via telephone, or via correspondence regarding any maintenance or repair questions arising out of the Project. The cost arising from such consultation is included in the Project Price. For any maintenance and repair consultation after the first (1st) anniversary of the Final Acceptance of the Project, City shall be charged in accordance with the Labor Rate Schedule.

(c) **Maintenance and Repair Updates.** From the installation of any portion of the Project until the tenth (10th) anniversary of the Final Acceptance of the Project, Contractor shall use best efforts to notify DTIS of any changes to prescribed maintenance procedure for the Project or any portion thereof. All service notes or maintenance information that becomes available after Equipment delivery must be sent to DTIS. If changes in the maintenance procedure(s) cannot be successfully attained through written materials and requires personal instruction(s) from qualified Contractor representatives, Contractor shall provide, at its sole cost, personal instructions to DTIS's technicians responsible for the maintenance and repair of the pertinent portion of the Project. Contractor shall provide the training within the boundaries of the City. To the extent the City requires the assistance of any service technician in connection with any maintenance or repair update after the first (1st) anniversary of Final Acceptance of the Project, the City shall pay for the cost of such technician in accordance with the Labor Rate Schedule. The cost of any service technician needed on or before the first (1st) anniversary of the Final Project Acceptance is included as part of the Project Price.

(d) **Special Maintenance Tools**. Contractor shall provide DTIS with six (6) sets of all special tools, including those considered proprietary, required or necessary for the maintenance of any part of the Project. All sets of special tools shall include any servicing aids not normally used in the day-to-day operations of a radio service facility. Special tools shall include, but not limited to, any utility Software used to change the Project's attributes, such as user parameters, access levels, password development, Project statistics, logging and reporting, talk-group partitioning, dispatch console channel control panel and radio control panel topology, mode of operation, adjustment of input or output levels, and changing paging codes. Any utility Software specific to Contractor's system and not readily available from other third parties shall be provided by Contractor. Contractor shall provide the following special tools to DTIS: Radio Service Software(s), Computer Terminal to Radio Equipment Interface(s), Computer Terminal to Radio Equipment Interconnecting Cable(s), Test Equipment(s) Proprietary to Contractor Trunking Radio Systems. Contractor shall provide any new special tools required or necessary in connection with any new or changed maintenance and repair procedure.

(e) **Repair Facilities**. Until the fifth anniversary of the Final Acceptance of the Project, Contractor shall maintain or cause to be maintained complete maintenance and repair facilities or authorized maintenance and repair facilities within the geographical area of the San Francisco Bay Region. The City reserves the right to visit and inspect such repair facilities to verify compliance to manufacturer recommended standards of repairs and practices, including, but not limited to, adherence to electrostatic discharge precautions.

(f) **Maintenance Records**. During the applicable warranty period, the Contractor shall prepare a detailed repair statement for all system or Equipment failure. Such statement shall provide the following (1) Equipment and model number, (2) date reported, (3) date repaired, (4) components replaced, (5) cause of failure and (6) any previous failure of the particular piece of Equipment. Contractor shall deliver a copy of the repair statement to the City's Project Manager upon completion of the repair.

(g) **Engineering Changes**. Until the first anniversary of the Final Acceptance of Project, Contractor shall provide approved engineering changes and/or field modifications to those circuits, Equipment or functions that have failed more than once. Contractor shall incorporate these precise changes into any similar Equipment being purchased by the City, regardless of whether that Equipment has been accepted or unaccepted. The cost and expense in providing all the foregoing shall be borne by the Contractor. Contractor shall also revise all associated documents at no cost to City.

(h) **Priority Services**. In the event of an emergency that affects the San Francisco Bay Area, Contractor shall give the City Priority 1 Service. Contractor shall use best efforts in delivering all necessary Equipment, parts and personnel to the City, using all means of available transportation.

## ARTICLE 15

### REPRESENTATIONS AND WARRANTIES

**Section 15.01. General Representations.** Contractor hereby represents to the City and the Corporation as follows:

(a) **Good Standing.** Motorola, Inc. is a Delaware corporation in good standing in the State of Delaware and qualified to do business in the State of California.

(b) **Authority.** The officers of Contractor executing this Master Agreement are duly and properly in office and fully authorized to execute this Master Agreement.

(c) **Ability to Perform.** Contractor is fully capable and equipped to expand, furnish, install, optimize and integrate a new citywide 800 MHz trunking radio communication system for the City, which will serve as the City's radio communication system, and the foundation for future enhancements and upgrades for the City and County of San Francisco. Contractor is fully capable and equipped to deliver and install the Project and provide the City with a Turn-key Project.

**Section 15.02. Basic Warranties.** Contractor hereby warrants as follows:

(a) **General.** Contractor warrants that all Equipment and materials in the Project shall be free from defects in material, design, workmanship, and be of the kind and quality that performs in the manner described in the Statement of Work and Services, the published Equipment specifications, and any or all applicable Standards and Recommendations specified in the Statement of Work and Services. The foregoing warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. This one-year warranty shall not effect or limit any standard manufacturer's warranty for any item of Equipment in the Project.

(b) **Codes and Standards.** All Equipment shall conform to all applicable codes and standards set forth in the Statement of Work and Services. All Equipment shall be merchantable and fit for the purposes intended as specifically set forth in the Statement of Work and Services. The foregoing warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. This one-year warranty shall not effect or limit any standard manufacturer's warranty for the item of Equipment. This warranty shall not cover any changes in the codes and standards that occur after the date of the Final Project Acceptance.

(c) **Radio Coverage.** Upon the passage of the Final Acceptance Test Plan, the Equipment for the Project, shall operate as a complete system for the City, providing ninety-five percent (95%) or better radio coverage for base station-to-portable-in-building and portable-in-building-to-base station, within the geographic boundary of the City and County of San Francisco

as shown by the Contractor's computer predicted radio coverage maps, as defined in the Statement of Work and Services. Signal levels of 15, 23 or 30 dB above the signal level on the street, as specified for certain areas in Section 3.1.2 of the Performance Specifications, will be used to provide a margin for inside man-made structures. All actual base station radio coverage within the defined geographic boundaries of the City will meet or exceed the computer predicted radio coverage submitted by Contractor's Engineering Services for the Project. When actual radio coverage is less than predicted as proven by a mutually agreed upon testing process, a deficiency of the system shall deem to exist which the Contractor shall correct at its sole cost and expense. The radio coverage warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. **The foregoing warranty shall not apply if the deficiency in the radio coverage is caused in whole by an element or a structure that did not exist prior to the Final Project Acceptance.**

(d) **Base Station Contours.** Contractor shall provide computer predicted maps that show the areas with signal levels of 40 dBu, 25 dBu and 5 dBu for the Project. These maps will be submitted by the City to the Chairman of the National Public Safety Planning Administration Committee for Region 6 ("**Frequency Coordinator**") for approval. Contractor hereby warrants that the Project 40 dBu, 25 dBu and 5 dBu maps will be acceptable to the Frequency Coordinator and that the Project will meet all requirements of the Northern California Regional Communications Plan for Region 6, as amended from time to time. Should the Frequency Coordinator disapprove any part of the maps, Contractor shall be responsible for all changes necessary to the system design to gain the approval from the Frequency Coordinator. The base station 25 dBu and 5 dBu prediction maps shall be measured by actual radio testing by the Contractor. The base contour warranty shall be effective for one (1) year commencing on the date of the Final Project Acceptance.

(e) **Compatibility Warranty.** Contractor warrants that the Project is fully downward compatible with all the installed and existing Motorola Type II 800 MHz trunking equipment, and all the Motorola Type II user equipment of the Base System. Contractor further warrants that completion of the Project will not degrade or lessen any of the installed and existing Motorola Type II 800 MHz radio trunking functions and features (exclusive of Dynamic Failsoft and Table Driven Shared Service Algorithm features). The foregoing warranty assumes that the City shall maintain all its radio channels and the units per channel in place as of the date of this Master Agreement. Any reduction in the number of channels shall only affect the grade of service and no other features shall be affected.

*see MOD 4*

(f) **Subcontractor Warranty.** Contractor hereby warrants all labor, workmanship, materials and Equipment provided by any Subcontractors on any Project. This Subcontractor warranty shall be effective for one (1) year, commencing on the date of Final Project Acceptance. This warranty shall not effect or limit any warranty provided by the Subcontractor.

(g) **Performance Specifications.** Contractor warrants that all the Equipment for the Project and the Project itself meets or exceeds the Performance Specifications. The foregoing

warranty shall be effective for one (1) year commencing on the date of Final Project Acceptance. This one-year warranty shall not affect or limit any standard manufacturer's warranty for the item of Equipment.

(h) **Replacement Obligation.** Should any defects arise in the Project relating to work, Equipment or parts, under normal and proper use, during the warranty period, such defects shall be corrected by and at the expense of Contractor. In connection with all the warranties, Contractor shall supply all labor (including on-Site diagnosis or analysis of problems or defects) and materials and to correct any troubles or malfunctions at no cost to the City.

(i) **Disclaimer of Warranties.** The warranties contained in (a) through (h) shall be voidable if (i) the specific product is used by the City in a manner other than its normal and customary manner or (ii) the specific product has been subject to misuse by the City. Further, provided in each case, that the warranty shall not be voidable if the cause of the specific product's malfunction is not due to items described in (i) or (ii) of this Section.

(j) **Disclaimer of Implied Warranties.** The express warranties contained in this Master Agreement are given in lieu of all other implied warranties, which are specifically excluded, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

**Section 15.03. Software Representations and Warranties.** Contractor hereby represents and warrants that it has full authority and right to provide to the City all the Equipment and Software which are a part of the Project, and that the City shall have the unfettered, unconditional, perpetual right to use all such Equipment and Software as part of the Project. Contractor hereby further represents and warrants that (i) none of the Software will infringe on any copyright or trade secret rights or any patent or other proprietary rights of a third party; (ii) Contractor is the owner of, or has sufficient license rights to, all Software; and (iii) Contractor has not previously granted any rights that are inconsistent with the rights to be granted to the City for any Software.

**Section 15.04. Assignment of Manufacturer's Warranties.** Contractor hereby assigns and transfers and hereby agrees to assign and transfer, to the City all of Contractor's right, title and interest in and to any warranties from the manufacturers, subcontractors or owners of each and every component for the Project, not manufactured by Contractor. Notwithstanding the pass-through of the manufacturer's warranties, Contractor is not relieved of any of its obligations under this Master Agreement.

## ARTICLE 16

### EVENTS OF DEFAULT; REMEDIES

**Section 16.01. Events of Default.** The following events shall each constitute a "Default" by Contractor:

(a) **Terms.** Contractor fails to comply with any term, covenant or condition of this Master Agreement and such failure continues for a period of thirty (30) days after written notice thereof from the City. In the event that the nature of the default is such that the Contractor cannot cure the default within thirty (30) days, then no default shall occur provided that Contractor submits a plan to cure such default. Such plan must be submitted within ten (10) days of the notice of default. In no event shall any cure plan contemplate a cure period longer than ninety (90) days. Contractor shall diligently cure all defaults.

(b) **Bankruptcy.** The appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of Contractor for the benefit of creditors, or any action taken or suffered by Contractor under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

(c) **Subcontractors.** Contractor fails to make any payments to any subcontractors or laborer providing any equipment, material or services in connection with the Project; and Contractor fails to provide the City sufficient evidence to support such nonpayment within ten (10) days of receiving written notice from the City.

(d) **Licenses and Source Code Escrow.** A breach of any term, covenant or condition in any License or Escrow Agreement and such breach is not cured within ten (10) days of receiving written notice thereof from the City.

**Section 16.02. Remedies.** In the event of a Default by Contractor, City shall have the right to exercise all remedies under the law including the following:

(a) **Termination.** The City shall have the right to terminate this Master Agreement by providing written notice to Contractor.

(b) **Specific Performance.** The parties acknowledge and agree that the services, work and Equipment being provided by Contractor for the Project are unique and the City could not obtain similar services, work and Equipment from another source without suffering irreparable harm. Accordingly, Contractor and the City agree that the City shall have the right to seek specific performance against Contractor on any portion of the Project due to Contractor's refusal to perform, unless such nonperformance is due to Contractor's bankruptcy.

(c) **Remedy for Failure to Perform Under Contract**. Should a Default arise under Section 16.01, the City shall have the right to perform the required work pursuant to Section 5.02 hereof.

(d) **Other Remedies**. All remedies available to the City for breach of this Master Agreement are cumulative (including, without limitation, termination of this Master Agreement, the right to damages and injunctive relief, and the right to procure components and take over work at Contractor's expense) and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**Section 16.03. Contractor/Limitation of Liability**.

(a) **General**. Except for intentional tort, personal injury or death, Contractor and City acknowledge and agree that Contractor's total liability, regardless of cause of action, under this Master Agreement shall not exceed one hundred percent (100%) of the Project Price (inclusive of Additional Equipment purchases), which amount shall be reduced by any consequential and incidental damages actually paid by Contractor under this Master Agreement or the 1992 Master Agreement (as hereinafter defined). Contractor's maximum liability is not contingent on the payment of any portion of the Project Price.

(b) **Consequential and Incidental Damages**. Contractor shall be responsible for consequential and incidental damages personal injury, including death, or property damage, due to Contractor's negligence or intentional acts or omissions, provided however such liability shall not exceed the Project Price (exclusive of Additional Equipment purchases) as such amount shall be reduced by any consequential or incidental damages actually paid by Contractor under the 1992 Master Agreement, dated as of February 5, 1992, between the City and Contractor ("1992 Master Agreement"). In exchange for Contractor agreeing to be responsible for consequential and incidental damages, the City shall enter into an amendment of the 1992 Master Agreement, providing for the limiting of incidental and consequential damages to the total Project Price (exclusive of Additional Equipment purchases), as such amount shall be reduced by any consequential or incidental damages actually paid by Contractor under this Master Agreement. Contractor's maximum liability is not contingent on the payment of any portion of the Project Price.

**Section 16.04. City/Limitation of Liability**. Except for liability for avoidable delays caused by City, City's obligations under this Agreement shall be limited to the payment of the compensation provided for in Section 4.01 of this Master Agreement. Notwithstanding any other provision of this Master Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Master Agreement or the services performed in connection with this Master Agreement.

## ARTICLE 17

### ARBITRATION

**Section 17.01. Arbitration.** Contractor and City will attempt to settle any claim, dispute or controversy arising out of this Master Agreement through consultation and negotiation in good faith and mutual cooperation. Should the parties fail to reach an agreement within thirty (30) days, either City or the Contractor may elect to arbitrate any dispute or controversy arising under this Master Agreement by providing the other party fifteen (15) days' prior written notice thereof. In the event of any arbitration pursuant to this Master Agreement, the arbitration shall be conducted in the City and County of San Francisco, California, by three (3) arbitrators. City and Contractor shall each have the right to select one of the arbitrators. Once selected, the two arbitrators shall select a third arbitrator within fifteen (15) days. If the arbitrators cannot agree within such time frame, the parties shall be obligated to select two new arbitrators. Within ten (10) Days of the selection of the third arbitrator, the three (3) arbitrators shall establish, the rules by which the arbitration shall be conducted. This Master Agreement to arbitrate shall be self-executing. The arbitrators shall have no power to modify or enforce any provisions of this Master Agreement and their jurisdiction is limited accordingly. The expenses of arbitration shall be borne equally by City and Contractor, provided that each party shall be responsible for the fees and expenses of its own experts, evidence and attorneys. **The arbitration shall be non-binding on both parties.** Except as stated herein, arbitrations shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. If mutually acceptable to both parties, the parties may agree to some other form of non-binding alternative dispute resolution procedure.

## ARTICLE 18

### GENERAL PROVISIONS

**Section 18.01. Assignment.** Because the City has entered into this Master Agreement upon the basis of the particular abilities, services and equipment of Motorola, Inc., a Delaware corporation, may not assign or delegate, voluntarily or involuntarily, by operation of law or otherwise, any rights or obligations of Motorola, Inc. under this Master Agreement without the prior written consent of the General Manager, which consent may be given or withheld in the sole discretion of the General Manager. A change of ownership or control of Contractor or substantially all assets of Contractor shall be deemed an assignment of this Master Agreement. The City shall have the right to assign any and all its rights and obligations under this Master Agreement to the Financial Trustee, Corporation or any other third party subject to and as provided in Section 11.06. In the event of an assignment by the City, Contractor shall execute any and all documents that the City may request in connection with such assignment. This Master Agreement shall inure to the benefit of the City and its successors and assigns and shall be binding upon Contractor and its successors and assigns. Notwithstanding the foregoing,



Contractor may assign this Master Agreement to any subsidiary owned solely by Contractor provided such subsidiary is adequately capitalized to cover all obligations and liabilities under this Master Agreement. Contractor must notify the City of such assignment.

**Section 18.02. Required Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Local Business Enterprise (LBE).**

(a) Chapter 12D of the San Francisco Administrative Code, as amended from time to time, establishes the City's policy of encouraging and increasing the use and participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Local Business Enterprises (LBE). Contractor is willing, agrees and hereby commits that it will subcontract portions of the Project under this Master Agreement, not related to Equipment cost, to qualified and certified MBE/WBE/LBE, from a list recommended by the San Francisco City and County Human Rights Commission (HRC). Contractor acknowledges and agrees that it is fully responsible for all firms that it selects from the list furnished by HRC to provide work and services on any Project. The failure of any of the selected firms to perform the contracted work shall not excuse Contractor from any of its obligations under this Master Agreement. Pursuant to Chapter 12D of the Administrative Code, the MBE/WBE subcontracting goals for this Project are 28% for MBEs and 5% for WBEs. Such goals may be reduced by HRC. These goals apply to the subcontracted portion of the overall Project.

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**Section 18.03. Equal Opportunity Employment and Business Practices; Liquidated Damages.**

(a) **12B and 12D.** Contractor agrees to comply fully with all provisions of Chapters 12B and 12D of the San Francisco Administrative Code, as amended from time to time. These chapters are incorporated herein and by reference made a part of this Master Agreement as though fully set forth herein.

(b) **Damages.** In the event that Contractor fails to comply in good faith with any of the provisions of Chapter 12D, Contractor shall be liable for liquidated damages for each violation in an amount equal to Contractor's net profit on the Master Agreement, or ten percent (10%) of the total amount of the Master Agreement, or One Thousand Dollars (\$1,000.00), whichever is greatest. The amount of liquidated damages imposed will be determined by the Director of HRC after investigation, pursuant to Section 12D.14(A)2 of the San Francisco Administrative Code. By entering into this Master Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of HRC shall be payable to the City and County upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract or agreement with the City.

(c) **Compliance by Subcontractors.** In the event that the Director of HRC determines pursuant to Section 12D.14, that one or more of Contractor's subcontractors has failed to comply

in good faith with any of the provisions of Chapter 12B or 12D, Contractor agrees to withhold monies due the subcontractor in an amount equal to any liquidated damages assessed by the Director of HRC. By entering into this Master Agreement, Contractor acknowledges and agrees that it will incorporate into all of its subcontracts a provision permitting Contractor to withhold monies equal to any liquidated damages assessed by the Director of HRC.

(d) **Penalty.** Pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Master Agreement may be deducted from payments due to Contractor.

(e) **Exception Granted.** The Human Rights Commission has granted Contractor an exception from compliance with the City's Equal Benefits ordinance. A copy of such exception is attached hereto as Exhibit M.

**Section 18.04 Prohibited Interests.** Contractor states that it is familiar with provisions of Section 8.105 of the Charter of the City of San Francisco, and Section 87100 *et seq.* of the Government Code of the State of California, incorporated herein by reference and made a part hereof, and certifies that it does not know of any aspects of its business or personal practices that constitute a violation of said sections. No member of the Board of Supervisors of the City and County of San Francisco, officer or employee of the City and County of San Francisco during his or her tenure or for one year thereafter shall have an interest, direct or indirect, in this Master Agreement or the proceeds thereof. No officer, director, or employee of Contractor, nor any member of a Contractor officer's, director's, employee's or family, shall serve on a City board or committee, or hold any position that either by rule, practice or action nominates, recommends, or supervises Contractor's operations, or authorizes funding to Contractor.

**Section 18.05. Waiver.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**Section 18.06. Notices.** All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered at the following addresses:

**CITY OR DTIS:**

General Manager  
Department of Telecommunications and Information Services  
901 Rankin Street  
San Francisco, CA 94124

**with a copies to:**

Project Manager for the 800 MHz Project  
Department of Telecommunications and Information Services  
901 Rankin Street  
San Francisco, CA 94124

City Administrator  
401 Van Ness Avenue, Room 402  
San Francisco, CA 94102

City Attorney's Office  
1390 Market Street, 6th Floor  
San Francisco, CA 94102-5408  
Attn: Victor L. Castillo

**CONTRACTOR:**

Motorola, Inc.  
1700 South Amphlett Boulevard, Suite 300  
San Mateo, CA 94402  
Attn: Project Manager for the San Francisco 800 MHz Project  
with copies to:

Motorola, Inc.  
9980 Carroll Canyon Road  
San Diego, CA 92131-1186  
Attn: Contract and Compliance

In the event a party desires to change its address, such party shall send written notice to the other party of at least ten (10) days prior to the time when the party wishes notices to be sent to the new address.

**Section 18.07. City Acting in Proprietary Capacity Only.** Contractor understands and agrees that the City is entering into this Master Agreement in its proprietary capacity and not as a

regulatory agency with police powers. Nothing in this Master Agreement shall limit in any way Contractor's obligation to obtain any required approvals from City departments, boards, or commissions having jurisdiction over the Project and its installation, repair, alteration or operation.

**Section 18.08. Evidence of Compliance.** To ensure that Contractor has complied or is complying with the requirements of this Master Agreement not readily enforceable through inspection and test of the Work, articles and materials, Contractor shall at any time when requested, submit to the City or the Project Manager properly authenticated documents or other satisfactory proofs of his or her compliance with such requirements.

**Section 18.09. Time of the Essence.** Time is of the essence with respect to the performance of each and all of the covenants, conditions and agreements of this Master Agreement.

**Section 18.10. Consent.** If consent or approval of City is required, such consent or approval must be given by the City Administrator of the City and County of San Francisco. If consent or approval is required by DTIS, such consent or approval must be given by the General Manager of DTIS. The giving of consent or approval in any one or more instances shall not be deemed to limit or excuse the need for such consent or approval in any other or subsequent instances.

**Section 18.11. MacBride Principles--Northern Ireland.** The City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Contractor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

**Section 18.12. Tropical Hardwood Ban.** The City urges companies not to import, purchase, obtain or use, for any purpose, any tropical hardwood or any tropical hardwood product.

**Section 18.13. Video Data Terminal Ordinance.** Contractor agrees to comply fully with all applicable provisions of the San Francisco VDT Ordinance 405-90, as amended from time to time. Said provisions are incorporated herein and by reference made a part hereof as though fully set forth. Contractor will provide the Equipment in accordance with the City's VDT Ordinance.

**Section 18.14. Drug Free Work Place.** If Contractor is required by its performance under this Master Agreement to comply with the Drug Free Work Place Act of 1988 (Pub. L.

100-690, Title V, Subtitle D), Contractor shall abide by all applicable terms and conditions of that Act.

**Section 18.15. Compliance With Americans With Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Master Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Master Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns, shall constitute a material breach of this Master Agreement.

**Section 18.16. Burma (Myanmar) Business Prohibition.**

(a) Contractor is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Any items sold pursuant to this Master Agreement to the City and County of San Francisco are not made in Burma (Myanmar) as defined in Section 12J.4(A) of the San Francisco Administrative Code. The City reserves the right to terminate this Master Agreement for default if Contractor violates the terms of this Section 18.16.

(b) Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Contractor to comply with any of its requirements shall be deemed a material breach of this Master Agreement. In the event that Contractor fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Contractor shall be liable for liquidated damages for each violation in an amount equal to Contractor's net profit under this Master Agreement, or 10% of the total amount of the contract, or \$1,000, whichever is greatest. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any moneys due to the Contractor from any City contract.

**Section 18.17. Captions.** All the captions contained in this Master Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Master Agreement.

**Section 18.18. Entire Agreement.** This Master Agreement sets forth the entire Master Agreement between the parties, and supersedes all other oral or written provisions relating to the Master Agreement. The request for proposal, the Contractor's proposal and subsequent drafts

shall have no effect for the purpose of interpreting the terms and conditions of this Master Agreement.

**Section 18.19. Conflicts and Inconsistency.** This Master Agreement consists of the agreement together with Exhibits A-M. To the extent an inconsistency exists between the agreement portion of the Master Agreement and its exhibits, the more restrictive clause shall control. To the extent the agreement portion of the Master Agreement is in direct conflict with one or more of the exhibits, the agreement portion of the Master Agreement shall control. To the extent an inconsistency exists between the exhibits in an area that is not addressed in the Master Agreement, the more restrictive clause shall control. To the extent the exhibits are in direct conflict in an area not addressed in the Master Agreement, the Performance Specifications shall control.

**Section 18.20. Governing Law.** This Master Agreement shall be governed by, interpreted in accordance with, and enforced pursuant to the internal laws of the State of California.

**Section 18.21. Jurisdiction and Venue.** The parties agree that the exclusive jurisdiction and venue of any action arising out of, or which concerns this Master Agreement, or to interpret or enforce this Master Agreement, shall be in the Superior Court of California for the City and County of San Francisco or the United States District Court for the Northern District of California. In the event of any litigation arising out of or which concerns this Master Agreement or to enforce or interpret this Master Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs (including attorneys' fees and costs attributable to in-house counsel) in addition to any other remedy to which it may be entitled.

**Section 18.22. Interpretation.** The neuter gender includes the masculine and feminine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, trust or other legal entity, public or private, whenever the context so requires. The singular number includes the plural, and the plural the singular, whenever the context so requires. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

**Section 18.23. Master Agreement Drafted by All Parties.** This Master Agreement is the result of arms-length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in Master Agreement shall not be construed against either party.

**Section 18.24. Severability.** If any provision of this Master Agreement is determined to be invalid or unenforceable, the remaining provisions shall be enforceable to the maximum extent possible.

**Section 18.25. Meaning of Certain Phrases.** Unless expressly stated otherwise, the words "as directed," "as required," "as permitted," or words of like effect are used, shall be understood that the direction, requirement, or permission of the Project Manager is intended. Unless expressly stated otherwise, the words "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary or proper in the judgment of the Project Manager. Unless expressly stated otherwise, the words "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, or acceptable to, or satisfactory to the Project Manager.

**Section 18.26. Counterparts.** This Master Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**Section 18.27. Public Disclosure Laws.** This Master Agreement and all documents received in connection with the Master Agreement and the Project are subject to Public Disclosure Laws, including the City's Sunshine Ordinance.





IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement on the day first mentioned above.

CITY:

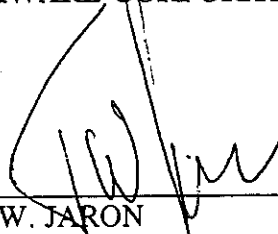
CONTRACTOR:

I have read and understood Sec. 61, City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.


CITY AND COUNTY OF  
SAN FRANCISCO, A  
MUNICIPAL CORPORATION


MOTOROLA, INC., A  
DELAWARE CORPORATION

  
\_\_\_\_\_  
WILLIE LEWIS BROWN, JR.  
Mayor

By:   
\_\_\_\_\_  
T.W. JARON  
Vice President and General Manager,  
Western Division

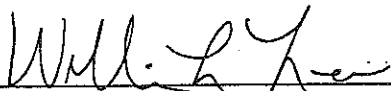
RECOMMENDED:

  
\_\_\_\_\_  
Director  
Department of Telecommunications  
and Information Services

REVIEWED AND APPROVED AS TO FORM  
  
\_\_\_\_\_  
SCOTT DODGE DATE  
MOTOROLA  
CONTRACTS AND COMPLIANCE DEPT.




**APPROVED:**

  
\_\_\_\_\_  
WILLIAM L. LEE  
City Administrator

  
\_\_\_\_\_  
EDWIN LEE  
Director of Purchasing

**APPROVED AS TO FORM:**

**LOUISE H. RENNE**  
City Attorney

By:   
\_\_\_\_\_  
VICTOR L. CASTILLO  
Deputy City Attorney

