

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") dated as of September 22, 1997 is between Motorola, Inc., a Delaware corporation, 1301 E. Algonquin Road, Schaumburg, IL 60196 ("Motorola"), and the City and County of San Francisco 901 Rankin St., San Francisco, CA 94124 ("Licensee").

Section 1 SCOPE

Licensee may acquire from Motorola's Land Mobile Products Sector ("LMPS") radio communication products ("Products") that contain embedded or pre-loaded Motorola software such as in a ROM, PROM, or EPROM, or other Motorola software provided on media such as a floppy disk, tape, diskette, or CD-ROM. All such software (including Radio Service Software and FLASHport® Software) is referred to as "Motorola Software." This Agreement contains the terms under which Licensee may use Motorola Software acquired from LMPS.

Section 2 GRANT OF LICENSE

Motorola hereby grants to Licensee a personal, non-exclusive, perpetual license under Motorola's applicable proprietary rights to use Motorola Software in accordance with the terms of this Agreement and the Agreement defined herein. This Agreement is subject to the terms and conditions of the Citywide 800 MHz Radio System Project Agreement, dated as of September 22, 1997, including Article 11 thereof (the "Agreement").

Section 3 LIMITATIONS ON USE

Licensee may use Motorola Software only for Licensee's internal business purposes and only as described in the Agreement and the Motorola Software or Product documentation. Any other use of Motorola Software is strictly prohibited and will be deemed a breach of this Agreement, except for internal use as provided herein. Licensee may not copy, modify, adapt, merge with other software, reverse engineer, prepare derivative works of, or disassemble any Motorola Software for any reason, except that Licensee may make at most two copies of Motorola Software provided with infrastructure equipment for back-up purposes. Licensee will be provided with a copy of Radio Service Software for each site at which Licensee uses Radio Service Software; Licensee may make one additional copy for each computer owned or controlled by Licensee at each such site. Prior to acquiring any Radio Service Software or upon Motorola's request, Licensee shall provide a list of all sites where the Licensee is using or intends to use any Radio Service Software. Licensee must reproduce all Motorola copyright and trademark notices on all copies of Motorola Software.

Section 4 TRANSFERS

A. Consent required. With the prior written consent of Motorola, the Licensee shall have the right to assign all software licenses to any third party. Motorola shall not unreasonably withhold its consent. The right to assign the Radio Service Software and FLASHport Software shall be limited to the assignments described below.

B. Consent for Assignment to the Corporation. Licensee hereby represents to Motorola that the Licensee intends to finance the 800 MHz radio system with governmental securities

secured by certain lease payments of the Licensee. In connection with the financing, certain assignments of the software licenses (including Radio Service Software and FLASHport Software) between the Licensee, the Financial Trustee (as defined in the Agreement) and the City and County of San Francisco Finance Corporation will be necessary for the financing ("Financing Assignments"). To allow the Licensee to accomplish the proposed financing, Motorola 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 800 MHz radio system, Motorola hereby irrevocably consents to the assignment of all software licenses (including Radio Service Software and FLASHport Software) to any other user of similar projects or equipment, provided that (i) the user is located within the United States of America, (ii) the Licensee's rights under the license are assigned subject to the terms of this agreement, (iii) the user is not a competitor of Motorola in the 800 MHz radio communication business and (iv) Motorola receives a transfer form (which Motorola will provide upon request) completed and signed by the new owner.

Section 5 OWNERSHIP AND TITLE

Title to all copies of Motorola Software in any form, including all rights in patents, copyrights, trade secrets, and other intellectual properties, remains vested exclusively in Motorola. Notwithstanding the foregoing, Licensee shall own all right, title and interest in any modifications or additions that the Licensee shall make to the Motorola Software, including without limitation Licensee-defined routines or macros.

Section 6 CONFIDENTIALITY

Licensee acknowledges that all Motorola Software contains valuable proprietary information and trade secrets and that unauthorized dissemination, distribution, modification, reverse engineering, disassembly, or other improper use of Motorola Software will result in irreparable harm to Motorola for which monetary damages would be inadequate. Accordingly, Licensee will limit access to Motorola Software to those of its employees and agents who need to use Motorola Software for Licensee's internal business purposes, and Licensee will take appropriate action with those employees and agents to preserve the confidentiality of Motorola Software. Motorola acknowledges that the Licensee is a public body subject to public disclosure laws.

Section 7 MAINTENANCE AND SUPPORT

No maintenance or support is provided under this Agreement. Maintenance or support will be provided under a Motorola Software Maintenance and Support Agreement in accordance with the terms of the Agreement.

Section 8 LIMITED WARRANTY

For two (2) years after initial shipment of Motorola Software, or for the Warranty Period specified in the Agreement between the parties, Motorola warrants that the Motorola Software, when used properly, will be free from reproducible defects that materially vary from its published specifications. Motorola does not warrant that Licensee's use of the Motorola Software or the Products will be uninterrupted or error-free or that the Motorola Software or the Products will meet Licensee's particular requirements. MOTOROLA'S TOTAL LIABILITY, AND

LICENSEE'S SOLE REMEDY, FOR ANY BREACH OF THIS WARRANTY WILL BE LIMITED TO, AT MOTOROLA'S OPTION, REPAIR OR REPLACEMENT OF THE MOTOROLA SOFTWARE OR PAYMENT OF LICENSEE'S DIRECT DAMAGES UP TO THE AMOUNT PAID TO MOTOROLA FOR THE MOTOROLA SOFTWARE OR THE INDIVIDUAL PRODUCT IN WHICH THE MOTOROLA SOFTWARE IS EMBEDDED OR FOR WHICH IT WAS PROVIDED. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE AND THE CORPORATION, AS IDENTIFIED IN THE AGREEMENT BETWEEN THE PARTIES, SUBSEQUENT TRANSFEREES ACCEPT THE MOTOROLA SOFTWARE "AS IS" AND WITHOUT WARRANTIES OF ANY KIND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 9 LIMITATION OF LIABILITY

IN NO EVENT WILL MOTOROLA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN EXCESS OF THE AMOUNT STATED IN THE AGREEMENT IN CONNECTION WITH WHICH THIS SOFTWARE LICENSE AGREEMENT IS GIVEN.

Section 10 TERM AND TERMINATION

Licensee's right to use Motorola Software will begin when Licensee sends a duly executed copy of this Agreement to Motorola, and either (a) Motorola returns a fully executed Agreement to Licensee or (b) Motorola ships Motorola Software or a Product containing Motorola Software to Licensee, and will continue in perpetuity unless terminated as follows. Licensee's right to use Motorola Software will terminate without notice upon a breach of this Agreement by Licensee. In addition, if Motorola reasonably believes that Licensee intends to breach this Agreement with respect to Radio Service Software or FLASHport® Software, Motorola will give written notice to Licensee and Licensee will then have three (3) days within which to deliver Motorola a letter stating that it does not intend to breach the agreement and specifically addressing any facts stated in the Motorola notice indicating to the contrary. If Motorola is in good faith not satisfied that Licensee will not breach this Agreement, Motorola may, by notice to Licensee, terminate Licensee's right to use such Motorola Software. Upon termination, Motorola will be entitled to immediate injunctive relief and, unless Licensee is a sovereign government entity, Motorola will have the right to repossess all Radio Service Software and FLASHport® Software in Licensee's possession. Within thirty days after termination of Licensee's right to use any Motorola Software, Licensee must certify in writing to Motorola that all copies of such Motorola Software have been returned to Motorola or destroyed.

Other than as provided above, in the event of any other material breach of this Agreement by the Licensee, Motorola shall send written notice to the Licensee and the Corporation. Both the Licensee and the Corporation shall have thirty (30) days to cure such breach. Should the Licensee and the Corporation fails to cure the breach within such time, Motorola shall have the right to terminate this agreement by written notice to the Licensee and Corporation.

Section 11 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:

LICENSEE 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

MOTOROLA:

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

Motorola, Inc.
1301 E. Algonquin Road, Room 2305
Schaumburg, IL 60196
Attn: LMPS Technical Assets Manager

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 12 GENERAL

- A. **Copyright Notices.** The existence of a copyright notice on Motorola Software will not be construed as an admission or presumption that public disclosure of Motorola Software or any trade secrets associated with Motorola Software has occurred.
- B. **Non-Motorola Software.** Motorola may provide non-Motorola software to Licensee under the terms of separate license agreements with the owners of such software. Licensee will abide by the terms of these licenses, subject to the terms of the Agreement.
- C. **Causes Of Action.** Licensee must bring any action under this Agreement within the time provided within the applicable state or federal law.
- D. **Waivers.** No waiver of a right or remedy of a party will constitute a waiver of another right or remedy of that party.
- E. **Assignments.** Motorola may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Motorola Software, without prior notice to or consent of Licensee, provided however, if Motorola sells the Motorola Software, then Motorola shall ensure that any source code for such software that has been deposited in escrow for the benefit of Licensee is transferred subject to the terms of such escrow.
- F. **Entire Agreement and Amendment.** This Agreement, together with the Agreement, contains the parties' entire agreement regarding Licensee's use of Motorola Software and may be amended only in a writing signed by both parties, except that Motorola may modify this Agreement as necessary to comply with applicable laws and regulations including FCC regulations.
- G. **Governing Law.** This Agreement will be governed by the laws of the United States of America to the extent that they apply and otherwise by the laws of the State of California.

Section 13 PROHIBITED INTERESTS

Motorola 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 Agreement or the proceeds thereof. No officer, director, or employee of Motorola, nor any member of a Motorola 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 Motorola's operations, or authorizes funding to Motorola.

Section 14 LICENSEE ACTING IN PROPRIETARY CAPACITY ONLY

Motorola understands and agrees that the Licensee is entering into this Agreement in its proprietary capacity and not as a regulatory agency with police powers. Nothing in this

Agreement shall limit in any way Motorola's obligation to obtain any required approvals from Licensee departments, boards, or commissions having jurisdiction over the Project and its installation, repair, alteration or operation.

Section 15 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 Agreement.

Section 16 MACBRIDE PRINCIPLES--NORTHERN IRELAND

The Licensee 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 Licensee also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Motorola acknowledges that it has read and understands the above statement of the Licensee concerning doing business in Northern Ireland.

Section 17 TROPICAL HARDWOOD BAN

The Licensee urges companies not to import, purchase, obtain or use, for any purpose, any tropical hardwood or any tropical hardwood product.

Section 18 VIDEO DATA TERMINAL ORDINANCE

Motorola 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. Motorola will provide the Equipment in accordance with the City's VDT Ordinance.

Section 19 DRUG FREE WORK PLACE

If Motorola is required by its performance under this Agreement to comply with the Drug Free Work Place Act of 1988 (Pub. L. 100-690, Title V, Subtitle D), Motorola shall abide by all applicable terms and conditions of that Act.

Section 20 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Motorola 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. Motorola shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Motorola shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Motorola, its employees, agents or assigns, shall constitute a material breach of this Agreement.

Section 21 BURMA (MYANMAR) BUSINESS PROHIBITION

(a) Motorola 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 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 Licensee reserves the right to terminate this Agreement for default if Motorola 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 Motorola to comply with any of its requirements shall be deemed a material breach of this Agreement. In the event that Motorola fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Motorola shall be liable for liquidated damages for each violation in an amount equal to Motorola's net profit under this Agreement, or 10% of the total amount of the contract, or \$1,000, whichever is greatest. Motorola acknowledges and agrees that the liquidated damages assessed shall be payable to the Licensee upon demand and may be set off against any moneys due to the Motorola from any Licensee contract.

Section 22 CAPTIONS

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

Section 23 GOVERNING LAW

This Agreement shall be governed by, interpreted in accordance with, and enforced pursuant to the internal laws of the State of California.

Section 24 JURISDICTION AND VENUE

The parties agree that the exclusive jurisdiction and venue of any action arising out of, or which concerns this Agreement, or to interpret or enforce this 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 Agreement or to enforce or interpret this 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 25 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 26 SEVERABILITY

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

Section 27 COUNTERPARTS

This 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 28 PUBLIC DISCLOSURE LAWS


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

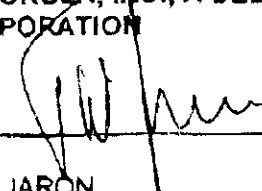
In Witness Whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.


**CITY AND COUNTY OF SAN FRANCISCO,
A MUNICIPAL CORPORATION**


**MOTOROLA, INC., A DELAWARE
CORPORATION**

RECOMMENDED:

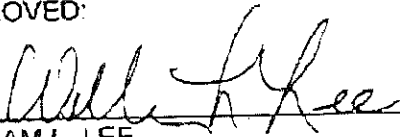

ED HARRINGTON
Director of Telecommunications and
Information Services

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



MIKE MARTIN
911 Project Director

REVIEWED AND APPROVED AS TO FORM
 9/8/97
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 CASTILLO
Deputy City Attorney

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Section 4 TRANSFERS

A. Consent required. With the prior written consent of Motorola, the City shall have the right to assign all software licenses to any third party. Motorola shall not unreasonably withhold its consent. The right to assign the Radio Service Software and FLASHport Software shall be limited to the assignments described below.

B. Consent for Assignment to the Corporation. City hereby represents to Motorola that the City intends to finance the 800 MHz radio system with governmental securities secured by certain lease payments of the City. In connection with the financing, certain assignments of the software licenses (including Radio Service Software and FLASHport Software) between the City, the Financial Trustee (as defined in the Master Agreement) and the City and County of San Francisco Finance Corporation will be necessary for the financing ("Financing

Assignments"). To allow the City to accomplish the proposed financing, Motorola 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 800 MHz radio system, Motorola hereby irrevocably consents to the assignment of all software licenses (including Radio Service Software and FLASHport Software) to any other user of similar projects or equipment, provided that (i) the user is located within the United States of America, (ii) the City's rights under the license are assigned subject to the terms of this agreement, (iii) the user is not a competitor of Motorola in the 800 MHz radio communication business and (iv) Motorola receives a transfer form (which Motorola will provide upon request) completed and signed by the new owner.

Section 5 OWNERSHIP AND TITLE

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For two (2) years after initial shipment of Motorola Software, or for the Warranty Period specified in the Master Agreement between the parties, Motorola warrants that the Motorola Software, when used properly, will be free from reproducible defects that materially vary from its published specifications. Motorola does not warrant that Licensee's use of the Motorola Software or the Products will be uninterrupted or error-free or that the Motorola Software or the Products will meet Licensee's particular requirements. **MOTOROLA'S TOTAL LIABILITY, AND LICENSEE'S SOLE REMEDY, FOR ANY BREACH OF THIS WARRANTY WILL BE LIMITED TO, AT MOTOROLA'S OPTION, REPAIR OR REPLACEMENT OF THE MOTOROLA SOFTWARE OR PAYMENT OF LICENSEE'S DIRECT DAMAGES UP TO THE AMOUNT PAID TO MOTOROLA FOR THE MOTOROLA SOFTWARE OR THE INDIVIDUAL PRODUCT IN WHICH THE MOTOROLA SOFTWARE IS EMBEDDED OR FOR WHICH IT WAS PROVIDED. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE AND THE CORPORATION, AS IDENTIFIED IN THE MASTER AGREEMENT BETWEEN THE PARTIES, SUBSEQUENT TRANSFEREES ACCEPT THE MOTOROLA SOFTWARE "AS IS" AND WITHOUT**

WARRANTIES OF ANY KIND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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Other than as provided above, in the event of any other material breach of this Agreement by the City, Motorola shall send written notice to the City and the Corporation. Both the City and the Corporation shall have thirty (30) days to cure such breach. Should the City and the Corporation fails to cure the breach within such time, Motorola shall have the right to terminate this agreement by written notice to the City and Corporation.

Section 11 NOTICES

All notices, consents, and waivers permitted or required under this Agreement will be deemed given upon receipt and must be delivered in writing to the addresses at the top of this Agreement and, if to Motorola, to the LMPS Technical Assets Manager, Room 2305. Change of address must be in writing to the other party.

Section 12 GENERAL

A. COPYRIGHT NOTICES: The existence of a copyright notice on Motorola Software will not be construed as an admission or presumption that public disclosure of Motorola Software or any trade secrets associated with Motorola Software has occurred.

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C. CAUSES OF ACTION: Licensee must bring any action under this Agreement within the time provided within the applicable state of federal law.

D. WAIVERS: No waiver of a right or remedy of a party will constitute a waiver of another right or remedy of that party.

E. ASSIGNMENTS: Motorola may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Motorola Software, without prior notice to or consent of Licensee, provided however, if Motorola sells the Motorola Software, then Motorola shall ensure that any source code for such software that has been deposited in escrow for the benefit of Licensee is transferred subject to the terms of such escrow.

F. ENTIRE AGREEMENT AND AMENDMENT: This Agreement, together with the Master Agreement, contains the parties' entire agreement regarding Licensee's use of Motorola Software and may be amended only in a writing signed by both parties, except that Motorola may modify this Agreement as necessary to comply with applicable laws and regulations including FCC regulations.

G. GOVERNING LAW: This Agreement will be governed by the laws of the United States of America to the extent that they apply and otherwise by the laws of the State of California.

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

City and County of San Francisco

Motorola, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____