
Agreement between the City and County of San Francisco

and

Motorola Solutions, Inc.

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

November 1, 2016

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Motorola Solutions, Inc.

This Agreement is made this First day of November, 2016, in the City and County of San Francisco, State of California, by and between Motorola Solutions, Inc., 500 W. Monroe Street, Chicago, IL 60661, (“Contractor” or “Motorola”) and the City and County of San Francisco (“City”). Contractor and City may be referred to as a “Party” or together as the “Parties.”

Recitals

WHEREAS, the City and County of San Francisco through the Department of Technology and the Department of Emergency Management wish to purchase a Citywide Public Safety Radio System; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on June 8, 2015 for a Public Safety Radio Project, Contractor submitted its proposal dated September 16, 2015 (the “Proposal”), and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement is 5%; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 49557 – 15/16 on June 20th 2016;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means written notice from the City's Project Manager to Contractor that the configured and integrated System or, if applicable, any special phase of the Project, meets the requirements of this Agreement in accordance with the Acceptance Test Plan as set

forth in Appendix E. The City will provide this notice in the form of an Acceptance Certificate when the Acceptance Tests have been successfully completed.

1.2 "Acceptance Test" means those tests set forth in the Acceptance Test Plan for the testing of the completed System for adherence to the promised Specifications for the System.

1.3 "Agreement" means this contract document, including all attached appendices, which are specifically incorporated into this Agreement by reference as provided herein.

1.4 "Change Order" means a written instrument initiated by the City and signed by both Parties that modifies this Agreement through an adjustment to one or more of the following: (i) the Project Schedule, (ii) the Statement of Work, (iii) the Equipment, Software or services to be provided under this Agreement, (iv) the System Description, and (v) the System Purchase Price, as long as it does not exceed the Guaranteed Maximum Cost of the contract.

1.5 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and "Department of Emergency Management" and/or "Department of Technology."

1.6 "City's Project Manager" means the individual specified by the City pursuant to Section 4.1.2(b) hereof, as the Project Manager authorized to administer this Agreement on the City's behalf.

1.7 "Contractor's Project Manager" means the individual specified by Contractor pursuant to Section 4.1.2(b) hereof, as the Project Manager authorized to administer this Agreement on Contractor's behalf.

1.8 "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party. Except in response to an open/public records request, disclosure of Confidential Information may be made only to those employees who have a need to know to perform their duties and have an obligation of confidentiality. To the extent any such disclosures may be required by law, City shall inform Motorola of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requestor, in sufficient time for Motorola to assert any objection Motorola may have to such disclosure with the appropriate administrative or judicial body.

1.9 "CMD" means the Contract Monitoring Division of the City.

1.10 "Contractor" means Motorola Solutions, Inc.

1.11 "Critical Milestones" means those milestones specified in the Project Schedule section of Appendix B.

1.12 "Defect" or "Defective Work" means that the System, Equipment, or Software, as the case may be is: (i) is faulty or deficient, arising from non-compliance with the written requirements of this Agreement, (ii) does not conform to the Specifications and/or Statement of Work, (iii) does not meet the requirements of any inspection, test, or approval referred to in the Acceptance Test Plan.

1.13 "Deliverables" means the Equipment, Software, installation materials, Documentation, and work product resulting from the Services that Contractor provides to City under this Agreement.

1.14 "Documentation" means documents relating to the Software, Equipment and, as-built, System that Contractor promises to deliver under this Agreement and that specifies technical, configuration settings, and performance features and capabilities, and the user, operation and training manuals for the System.

1.15 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.16 "Equipment" means the equipment that City purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List found in Appendix D.

1.17 "Final System Acceptance" means the Acceptance Tests have been successfully completed, all Deliverables have been completed to the satisfaction of the City, and all punch-list items have been resolved.

1.18 "Fix" means repair or replacement of Equipment or Software to remedy a Defect or Defective Work, as chosen by Contractor and agreed to by the City.

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

1.20 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Contractor.

1.21 "Motorola Software" means Software the copyright of which is owned by Contractor or its affiliated companies.

1.22 “Non-Motorola Software” means Software the copyright of which is owned by a third party.

1.23 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.24 “Project” means the entirety of the Equipment, Software and Services, required to implement the System in accordance with the Statement of Work through the expiration of the Warranty Period.

1.25 “Project Schedule” means the mutually agreed schedule showing the estimated timeframe within which the Parties will perform their respective responsibilities under this Agreement for completion of all phases of work, and the Critical Milestones associated with such completion. The Project Schedule is set forth in Appendix B.

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

1.27 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Statement of Work" attached as Appendix A, including all services, labor, supervision, and other work requirements to be performed and furnished by Contractor under this Agreement.

1.28 “Software” means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment. The Software License Agreement is included in Appendix H, and all Software provided in this Agreement are subject to the terms of the attached Software License Agreement except for any Open Source Software and Non-Motorola Software concerning which the copyright owner does not allow Motorola to sublicense under its Software License Agreement. The term “Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.29 “Specifications” means the functional, technical and operational requirements and characteristics of the System as described in the System Description, as set forth in Appendix C.

1.30 “Statement of Work “ or “SOW” means the mutually agreed to document describing the Services to be provided by Contractor under this Agreement, including the description of Services, list of Deliverables, roles and responsibilities and such other matters agreed to by the City and Contractor.

1.31 “Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in the System Description, as set forth in Appendix C.

1.32 “System” or “System Description” mean the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System Description as set forth in Appendix C.

1.33 “Warranty Period” means one (1) year from the date of Final System Acceptance.

1.34 “System Purchase Price” means the price for the System as referenced in Section 3.1 of this Agreement excluding sales or use taxes but including freight and discount levels associated with the transaction. In the pricing summary, the estimated sales or use taxes will be shown.

1.35 “Workaround” means a temporary change in the procedures followed or end user operation of the Equipment, Software or System to avoid a Defect or Defective Work without significantly impairing functionality or degrading the use of the equipment software or System.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expires on June 30, 2021, unless earlier terminated as otherwise provided herein or extended per mutual written agreement as provided in Section 10.22, "Modification of this Agreement." Some provisions of this Agreement survive expiration or termination of this Agreement as stated below in Section 8.4.

Article 3 Financial Matters

Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.1 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified

maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 10.22, "Modification of this Agreement." The System Purchase Price is forty-two million, five hundred and thirty four thousand, one hundred and thirty-six dollars [\$42,534,136]. The Guaranteed Maximum Cost figure is forty-eight million dollars [\$48,000,000], including all taxes.

3.2 **Compensation.**

3.2.1 **Payment.** Contractor shall provide invoices to the City in accordance with the milestone payment schedule set out in Appendix J, "Calculation of Charges." Compensation shall be made for the Deliverables and Services (or milestones) identified in the invoice that the DEM Director, in his or her discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists and will pay the undisputed portion as provided in this Agreement. In no event shall the amount of this Agreement exceed the Guaranteed Maximum Cost figure stated in Section 3.1 above. This System Purchase Price is for the System, including warranty services. Post-warranty maintenance and support services are addressed in a separate Maintenance and Support Agreement.

In no event shall City be liable for interest or late charges for any late payments.

3.2.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the Department of Emergency Management approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to Fix defective Deliverables or re-perform Defective Services even if the unsatisfactory character of such Deliverables or Services may not have been apparent or detected at the time such payment was made. Defective Deliverables and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be Fixed (or re-performed as to Services) by Contractor without delay at no additional charge to the City.

3.2.3 **Freight, Title, and Risk of Loss.** Freight charges are included in the System Purchase Price. Motorola will pack and ship all Equipment in accordance with good commercial practices. Contractor is responsible for local warehousing of the Equipment, where Contractor will inspect and inventory the Equipment. City representatives may participate in these activities. Title and risk of loss to the Equipment will pass to City upon delivery to the City's destination point. City will promptly inspect the delivered Equipment, and City has no duty to accept, and may rightfully reject, Equipment that has been damaged in transit or that fails to conform to the order. Title to Software does not pass at any time but is governed by the applicable Software License Agreement.

3.2.4 **Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments

due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.2.5 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form reasonably acceptable to the Controller of the City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified on the invoice or in such alternate manner as the Parties have mutually agreed upon in writing.

3.2.6 **LBE Payment and Utilization Tracking System.** Contractor must submit all required payment information using the online LBE Utilization Tracking System (LBEUTS) as required by CMD to enable the City to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the LBEUTS with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the online LBEUTS that all subcontractors have been paid. Contractor shall attend a LBEUTS training session. LBEUTS training session schedules are available at www.sfgov.org/lbeuts.

3.2.7 **Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers. The EIN for Motorola Solutions, Inc. is 36-1115800.

3.3 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records that are prepared and maintained in the ordinary course of Contractor's business and that relate to its Services. Contractor will permit City at City expense to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. City shall treat all such information as

Motorola's Confidential Information and shall protect it as provided under Section 1.8 and 10.4. Contractor has no duty to disclose its trade secret information under this or any other provision of the Agreement. Contractor shall maintain such data and records in the location where such records are ordinarily kept and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.4. Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

Article 4 Services and Resources

4.1/ Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in the Statement of Work, Appendix A. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond those listed in the Statement of Work, unless modified by a Change Order or as provided in Section 11.5, "Modification of this Agreement."

4.1.1 **Project Administration**

(a) **Project Schedule.** The Project Schedule is set forth in Appendix B and may be amended by mutual written agreement pursuant to Section 5.i. between City and Contractor.

(b) **Delays.** To prevent slippage in the completion of the project, Contractor and City agree that if such slippage occurs, both Parties will take all steps necessary steps to bring Project back on schedule.

(c) **Time is of the Essence.** The Parties agree that time is of the essence with respect to the Critical Milestones, and that the System will be developed and implemented in accordance with each parties' responsibilities in this Agreement and the Project Schedule.

(d) **Critical Milestones.** Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive Critical Milestones that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Project Schedule. Notwithstanding the City's ability to assess liquidated damages, as set forth in Section 4.9 below, the time period for achieving Acceptance shall not exceed the mutually defined and agreed to time period, as included in the Project Schedule.

4.1.2 Project Managers. Contractor and City shall each designate a Project Manager, who shall be accessible by telephone and e-mail throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor.

(a) The City's Project Manager will be authorized to make binding decisions for the City regarding this Agreement and will: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Contractor of City's requirements; and (4) upon request provide access to City's staff, facility and hardware. 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. City's Project Manager shall communicate all of his or her concerns to Contractor's Project Manager. In the event Contractor believes that any direction being given by City's Project Manager shall impair the performance of the Project or any phase thereof, Contractor shall promptly inform the City's Project Manager of its concern. Except as specifically provided under this Agreement, City's Project Manager's management of the Project shall not relieve Contractor of any obligations or liabilities set forth in this Agreement and the Appendices or Exhibits thereto.

(b) Throughout the term of this Agreement, whenever the Contractor's Project Manager is not on site, he or she must be available by phone or e-mail during normal

business hours and days (9 a.m. to 5 p.m. Monday through Friday, excluding City-designated holidays, or during any scheduled off-hours project activities and for critical activities such as system changes and updates). Whenever the Contractor's Project Manager will be unavoidably absent or otherwise unavailable by phone or e-mail for more than eight hours, then a substitute Project Manager or Contractor representative must be designated to respond to telephone calls and e-mails from the City. Contractor shall use its commercially reasonable efforts to maintain the same Project Manager until Final Acceptance of the System.

Contractor's Project Manager: Brian White

City's Project Manager: Michelle Geddes

(c) Changing Project Managers. The City and Contractor shall use their commercially reasonable efforts to maintain the same Project Manager until Final Acceptance of the System. However, if the Contractor needs to replace its Project Manager, the Contractor shall provide the City written notice thereof at least forty-five (45) calendar days prior to the date the Project Manager shall be replaced, if feasible under the circumstances. Such notice shall provide all the required information above. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. The City has the right to appoint a deputy or assistant Project Manager, to act with the authority of the Project Manager in connection with any particular task or set of tasks. Parties shall notify each other in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

(d) Qualified Personnel/Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor or City-approved subcontractors. Contractor will use commercially reasonable efforts to comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

(e) Meetings. From the commencement date of the Project until the Final Acceptance of the System, the Project Managers shall communicate at times and locations designated by City to discuss the progress of the Project. During the term of the Project, the Project Managers shall communicate, as required by the City, to discuss any operational problems or defects that City has encountered. City 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. Contractor and City's Project team must be available to meet as often as is necessary to facilitate timely completion of the Project.

(f) **Progress Reports.** Contractor's Project Manager shall provide progress reports in writing, as requested by the City, to the City's Project Manager, which summarizes overall project status, and which, lists meetings that are planned, problems encountered and issues to be resolved.

4.1.3 Inspection. City's Project Manager shall have the right to inspect at any time, all Deliverables, equipment and materials to be provided for the Project, and the manufacture, assembly and installation of such Deliverables, equipment and materials. City's Project Manager's inspection shall be based on compliance with the Agreement. City's Project Manager's right to inspect all aspects of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Agreement. City's Project Manager shall reject nonconforming work by providing written notice of any Defective Work promptly after discovery.

(a) **Special Testing Tools.** Contractor shall identify and/or furnish all tools, labor and material that Contractor deems necessary for it to inspect any Deliverables, Equipment, Software, or Services. Unless purchased by the City, all testing tools shall remain the property of Contractor.

(b) **Right to Stop Work.** City's Project Manager shall have the right to stop any work on the Project if City, upon two (2) business days advance written notice, notifies Contractor of a material Defect in the work or Deliverables and after such notice, Contractor fails to promptly commence correction of any identified Defects in the work or Deliverables. All stop work orders from the City shall be in writing and signed by City's Project Manager. City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall promptly cease working on that portion of the work specified in the order, until the cause for such order has been eliminated. 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 emergency situations that may impact life safety, or additional damages, the City has the right to stop work immediately.

4.1.4 Change Orders. The City may at any time by written order request a Change Order to Contractor. Within ten (10) business days, unless otherwise agreed by the Parties, of receiving a proposed Change Order, Contractor shall submit to City a written response, which shall include any adjustments to the System Purchase Price, the Project Schedule, the Statement of Work, the Equipment List, or any other obligations of Contractor, as applicable.

(a) Any Change Order requiring a System Purchase Price adjustment that results in an overall increase to the not to exceed compensation described in Section 3, shall be agreed to in writing by the Parties and executed in the same manner as this Agreement pursuant to Section 53 (Modification of Agreement).

(b) All Change Orders must be approved, in writing, by the Parties' Project Managers. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City's Project Manager; or, if Contractor does proceed with such work, it does so at its own risk.

(c) The City shall have authority to request minor changes in the work not involving either an adjustment in the System Purchase Price or an extension of the time for completion of the work. The City's Project Manager may waive a variation in the work if, in his or her reasonable opinion, such variation does not materially change the work or the System's performance.

(d) The price for Change Orders must be offered at the same discount levels, including system discount incentive pricing, that the Equipment and Services are offered, as described in the Calculation of Charges and reflected in the System Purchase Price, for the duration of this Agreement. If a Change Order decreases the Equipment or Services, any corresponding price reduction will take into consideration discounts.

4.1.5 City Facilities. City will provide facilities or equipment for Contractor's use during the term of the Agreement and the conditions upon which access will be granted. Per Mandatory City Requirements, Contractor's staff may be subject to a required Background Check for access to City Facilities which will be conducted in accordance with applicable laws, including those pertaining to the protection of a worker's personal information.

4.1.6 Access to Sites. City will provide all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites as reasonably requested by Contractor so that it may perform its duties in accordance with the Project Schedule and Statement of Work. Contractor will assist in the local building permit process as needed.

4.1.7 Site Conditions. The City will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and Cal-OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, the City will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Contractor may inspect the work site and advise the City of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

4.1.8 Site Issues. If the City determines that the sites identified are no longer available or desired, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and System Description as necessary. If change in sites or adjustment to the installation plans and Specifications causes a change in the cost or

time to perform, the Parties will equitably amend the System Purchase Price, Performance Schedule, or both, by a Change Order.

4.1.9 Statement of Work

(a) System Development. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor agrees to configure, integrate and install the System as fully described in the Appendices. The System will be subject to Acceptance Testing to verify conformity with the Specifications. The Contractor shall provide a comprehensive, fully-integrated Project 25 Radio System including all contracted Subsystems, specifically designed for the City, including all Services related to delivery, installation, integration, data migration, training, documentation, deployments, and project management.

(b) The System shall be compatible and fully-integrated with the components of the City's current radio system as indicated to be re-used in the Statement of Work, compliant with applicable TIA-102 standards.

(c) In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any SOW, this Agreement, without reference to any SOW, shall control.

(d) Interpretive Differences. In the event City and Contractor differ in their interpretations of the functional requirements, Specifications, or Acceptance Tests, the matter of City's interpretation, if reasonable, shall be determinative. Any disagreements arising out of this section shall be resolved pursuant to the procedures established by Section 10.23 (Dispute Resolution; Government Code Claims) of this Agreement.

(e) System Acceptance Procedure. System Acceptance will occur upon successful completion of the Acceptance Tests, and Acceptance testing will occur only in accordance with the Acceptance Test Plan. If the Parties need to modify the ATP, they will agree in writing on the changes to process/criteria for acceptance, depending on the nature of Deliverables and the System or Subsystem, or phase involved by means of a Change Order. If an Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase may occur at the discretion of the City upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If the City believes the System or Subsystem has failed the completed Acceptance Tests, City will provide to Contractor a written notice that includes the specific details of the failure. In the event that Contractor fails to provide the Deliverables, System or Subsystem which meet the Acceptance Criteria set forth in Appendix E of this Agreement, City may, at its option, resort to the default and termination provisions in Section 8.2.

(f) Contractor's Assistance in Acceptance Tests. Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be

currently certified as “calibrated” by the test equipment manufacturer, or its authorized calibration service agent.

(g) **Failure to Pass Acceptance Tests.** In the event that City determines that the System or Subsystems fail to materially meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within 30 days from date of Contractor’s receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor’s presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within 30 days following the scheduled completion of Acceptance Testing (excluding from consideration factory testing), as the sole result of Contractor’s non-compliance with the Acceptance Criteria, City may resort to the default provisions under this Agreement.

(h) City and Contractor shall conduct Acceptance Testing in accordance with the Acceptance Test Plan. City will not be deemed to have accepted the Deliverables, System or Subsystem, or phase until Contractor receives written notice of Acceptance from City.

4.1.10 Operational Test (180 day-burn in). The Contractor must perform a 180-day burn in Operational Test as described in the ATP once all users identified in the Transition Plan are migrated onto the System. During this Operational Test, no Priority 1 deficiencies in the System can occur that impact operations. Priority 1 issues are defined in the ATP. If a Priority 1 issue occurs during the Operational Test, the 180 day timeframe is reset and the Contractor must restart the test.

4.1.11 Final System Acceptance. Final System Acceptance will occur upon successful completion of all Acceptance Tests, including the Operational Test (180-day Burn-in period including any extensions), and when all Deliverables and other work including punch list items have been completed. When Final System Acceptance occurs, the Parties will promptly memorialize this final event by means of a Final System Acceptance Certificate. In no case will a “Conditional Acceptance” be granted to the Contractor.

4.1.12 Failure to Achieve Final System Acceptance. In the event of Contractor’s failure to achieve Final System Acceptance, the City may resort to the default provisions of this Agreement, in accordance with Section 8.2 below, and shall be entitled to all available remedies at law or in equity.

4.1.13 Documentation. Contractor will provide System Documentation in accordance with the Statement of Work. The City may withhold its issuance of the notice of Final System Acceptance until City receives the completed Documentation in accordance with the SOW.

4.1.14 Training. Training to be provided by Contractor to the City is described in the Statement of Work and Training Plan. The City will notify Contractor immediately if a

date change for a scheduled training program is required. The City may withhold its issuance of the notice of Final System Acceptance until City receives the contracted training in accordance with the SOW and Training Plan; Final System Acceptance will not be delayed if the City chooses to delay or defer training of some of its personnel.

4.1.15 Existing Systems

(a) Due Care. Contractor shall use its best efforts to protect all existing City property and shall be responsible for correcting any damage it causes to any equipment, facility and structure to the condition prior to the time of damage.

(b) Interruption of Service. Contractor shall use reasonable efforts to avoid any unscheduled interruption of service of the existing systems during the course of installation, testing, warranty or servicing of the Project. If 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. City's and Contractor's Project Managers must supervise all service interruptions. With any interruption of service, Contractor and appropriate City staff will fully restore the existing system and verify that the system is not degraded by the interruption.

(c) Modified Equipment or Systems. Contractor shall be responsible for correction of deficiencies in any Contractor-provided equipment, including legacy equipment, owned by the City or user agency if the deficiency (i) is caused by Contractor's modification of such equipment as part of the Project and (ii) prevents the System from performing in accordance with the Specifications.

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

4.2 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of the City. City may request a change to or removal of a subcontractor for good cause, and Contractor will change or remove the subcontractor, if good cause is found. If City requires the change or removal of a Subcontractor who is an LBE, then the City will notify CMD of the change and the reason for the change. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party; neither Party is the agent of the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed in the Subcontractor Plan contained in the Statement of Work, unless modified by a Change Order or as provided in Section 11.5, "Modification of this Agreement."

4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.3.1 **Independent Contractor.** Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor in relationship to City, and Contractor is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this 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 a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.3.2 **Payment of Employment Taxes and Other Expenses.** Should 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 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). 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 City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this 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 Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section by tax authorities.

4.4 Prevailing Wages. The City has determined that this Agreement is subject to California's Prevailing Wage laws with respect to "the installation of computer equipment racks, mounting of antennae on buildings, and running of CAT5/6 and RF cables for an 800 MHz radio system." Prevailing Wage Law applies only if and to the extent Contractor's Services involve the "erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement" in accordance with California Public Contract Code Section 1101 ("Covered Services").

Should Contractor utilize any subcontractor(s) to provide Covered Services for this Agreement, Contractor and its subcontractors shall comply with the following: On July 1, 2014, the registration program under section 1725.5 of the California Labor Code went into effect. All subcontractors who propose or perform Covered Services work under this Agreement must register and pay an annual fee to the California Department of Industrial Relations (DIR). Effective March 1, 2015, Contractor shall not seek proposals from nor utilize any subcontractor to perform Covered Services that is not registered with the DIR. The City shall not accept a proposal that includes subcontractors who will perform Covered Services without proof that these all subcontractors are registered to perform public works pursuant to California Labor Code section 1725.5. Effective April 1, 2015, Contractor agrees to ensure that any subcontractor it intends to utilize for performing Covered Services work under this Agreement shall be first registered with the DIR and shall maintain a current registration with the DIR.

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by the City by written instrument executed and approved in the same manner as this Agreement, which approval shall not be unreasonably withheld or delayed. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranties

(a) **Warranty of Service.** Contractor warrants to the City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. Warranty of Service claims must be asserted within a reasonable time of discovery.

(b) During the Warranty Period, in addition to warranty services, Contractor will provide maintenance services for the Equipment and support for the supplied Software as described in the Warranty Section of the Statement of Work. Those services and support are included in the System Purchase Price.

(c) Warranty of Performance Specifications; Warranty Services. During the Warranty Period, Contractor hereby warrants that the System will perform in accordance with the required functionality Specifications defined in Appendix C. This warranty excludes and Contractor is not responsible for System performance Deficiencies that are caused by reasons or parties beyond Contractor's control, such as Force Majeure events; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; or the addition of frequencies at System sites that cause RF interference or intermodulation.

(d) Equipment Warranty. During the Warranty Period, Contractor warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

(e) Software Warranty. During the Warranty Period, Contractor warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 4.6 that are applicable to the Motorola Software.

(f) Contractor warrants that (i) it owns all rights, title, and interest in and to the Motorola Software, (ii) in the case of Non-Motorola Software (i.e., third party software), it has the right to either (a) sublicense the Non-Motorola Software to the City under the terms and conditions of the Software License Agreement or (b) provide the Non-Motorola Software and all Open Source Software under the terms and conditions of the copyright owner's applicable software license agreement.

(g) Exclusions. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, , neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Contractor; City's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vi) normal or customary wear and tear.

(h) Defect, Claims and Remedies. To assert a warranty claim (if Contractor has not already detected the Defect and opened a case), City must notify Contractor of the claim. Upon receipt of this notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall correct the Defect, at no charge to the City, by at Contractor's option: (i) repairing the defective Equipment or Software, (ii)

replacing defective Equipment or Motorola Software with the same or equivalent product, or if neither of these two remedies (i) and (ii) are practical, then (iii) refunding the price of the defective Equipment or Motorola Software. Repaired or replaced Equipment is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Contractor. Contractor's response times to remedy a Warranty claim will be consistent with the response times and severity levels in the Warranty Services (Appendix G). The City shall conduct a root cause analysis before issuing any notice of Defect. These warranties are provided to City and are not assignable.

(i) **Warranty of Compatibility.** Contractor warrants that the System will be compatible and will interface with other existing City systems as detailed in the System Description and Statement of Work.

(j) **Warranty of Suitability for intended purpose.** Contractor warrants that the System will be suitable for the intended purpose of providing Public Safety Land Mobile Radio communications to the City.

(k) **No Implied Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, CONTRACTOR MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY.

4.7 **Substitutions.** No substitutions can be made to any Equipment, Software or Services unless approved by the City.

4.8 **Performance Bond.** The Performance Bond and Payment Bond. The Contractor is required to furnish a performance bond and a payment bond on AIA Form A312 2010, a copy of which has been provided to and is acceptable to the City, in a sum of not less than 33.4 Million Dollars (\$33,400,000). This requirement shall remain in place until Final System Acceptance at which time the requirement for this bond shall be released by the City.

4.9 **Force Majeure.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

4.10 **Liquidated Damages.** Contractor agrees that in the event it fails to achieve either the "Design Review Complete" or the "Operational Acceptance Test Complete" Critical Milestone in accordance with the Project Schedule as the sole result of Contractor's failure to perform its obligations under this Agreement, the City will suffer actual damages that will be impractical or extremely difficult to determine. Further, Contractor agrees that (i) the sum of \$2,000 per day for each calendar day of delay resulting from Contractor's failure to perform its obligations under this Agreement concerning the "Design Review Complete" Critical Milestone,

and (ii) the sum of \$2,000 per day for each calendar day of delay resulting from Contractor's failure to perform its obligations under this Agreement concerning the "Operational Acceptance Test Complete" Critical Milestones are not a penalty, but are a reasonable estimate of the loss and damage that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. The total liquidated damages shall be capped at \$1,500,000. These liquidated damages are intended to compensate the City as its sole and exclusive remedy for all damages caused by such delay. Prior to the assessment of liquidated damages, the Parties will conduct a root cause analysis to ascertain the cause of the delay in meeting the particular Critical Milestones. Contractor shall be entitled to a thirty (30) day grace period before City is entitled to any liquidated damages concerning either of this Critical Milestones. City may deduct a sum representing the liquidated damages from any money due to Contractor. If Contractor brings the Project back on schedule so that it achieves the "Final System Acceptance" as promised, Contractor will request and the City will release up to 50% of any liquidated damages previously paid or withheld concerning either the "Design Review Complete" or the "Operational Acceptance Test Complete" Critical Milestone.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence and \$10,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits of \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession and only concerning the System transaction, with limits of \$1,000,000 each claim and \$2,000,000 general aggregate with respect to negligent acts, errors or omissions in connection with the Services, including:
 - (i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(ii) Liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(iii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees. As used in this Section pertaining to insurance, the term "Agent" means a person who is not an employee of City but who has been appointed by City to perform some governmental function and is performing that function when the covered event occurs.

(b) The Commercial General Liability policy is primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 Contractor shall provide thirty (30) days' advance written notice to the City of cancellation for any reason or intended non-renewal or reduction in coverage initiated by the Contractor. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." Contractor's policies are written on a July 1-June 30 cycle.

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Only the Professional liability may be a "claims made" policy. If such coverage is not commercially available for a three (3) year period, then City will accept Contractor's self-insurance for that coverage for the three (3) year period.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement pursuant to the default provisions.

5.1.6 After this Agreement is executed but before commencing any Services, Contractor shall furnish to City standard ACORD form certificates of insurance and blanket additional insured policy endorsements for Commercial General Liability and Automobile

Liability with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor and its employees.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance that is appropriate for its services, including waivers of subrogation for Workers Compensation for the City if permitted by the Subcontractor's Worker's Compensation insurance provider, and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds concerning the Commercial General Liability and Commercial Automobile Insurance policies.

5.2 **Indemnification.** Contractor shall indemnify, defend, and hold harmless City and its officers, agents and employees ("Indemnitees") from and against any and all third party claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from and to the extent caused by Contractor's (or its Subcontractors' or their employees) negligence or intentional misconduct in the performance of this Agreement (collectively, "Claims"). The Parties agree that Claims could result from any of the following: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others. The foregoing indemnity applies to the extent such indemnity is permitted by law; covers Claims for the passive negligence of the City provided Contractor is concurrently negligent; and shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs. City may at its expense participate in the defense of a Claim so long as it does not interfere with the settlement or other resolution of the Claim.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any Claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues until the Claim is resolved.

5.3 Indemnification for Design Professionals. To the fullest extent permitted by law (including California Civil Code section 2782.8), Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control in the performance of professional design services (collectively, "Liabilities").

5.4 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's indemnification responsibilities under Section 5.2, nor shall the amount of insurance coverage operate to limit the extent of such liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

5.5 Patent and Copyright Infringement Indemnification. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the United States patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of the Equipment manufactured by Contractor or Motorola Software, or work or deliverables supplied in the performance of Services, provided that City promptly notifies Contractor of any infringement claim and, if requested, cooperates with Contractor in its defense or settlement of the infringement claim. If an infringement claim occurs or is likely to occur, Contractor will at its option and expense and as City's sole remedy: (a) procure for City the right to continue using the infringing products provided by Contractor; (b) replace or modify the infringing product so that it becomes non-infringing while providing functionally equivalent performance; or (c) if none of the remedies under (a) or (b) immediately above is reasonably available to Contractor, then Contractor will accept the return of the infringing product and grant City a credit or refund for the product, less a reasonable charge for its use. Contractor will have no duty to defend, hold harmless or indemnify for any infringement claim that is based upon: (a) the combination of the product with any software, apparatus or device not furnished by Contractor; (b) the use of ancillary equipment or software not furnished by Contractor and that is attached to or used in connection with the product; (c) a modification of the product by a party other than Contractor; (d) use of the product in a manner for which it was not designed; or (e) the failure by City to install an enhancement release to any Software that is intended to correct the claimed infringement.

Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS 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, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 **Liability for Use of Equipment.** Except for City's active negligence or intentional misconduct, City shall not be liable to Contractor for any damage to persons or property as a result of the use, misuse or failure of any City-owned equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Limitation of Liability.** Except for personal injury or death, damage to tangible property, damage caused by Contractor's intentional misconduct or gross negligence, or infringement under Section 5.5 above, Contractor's total liability to the City regardless of the cause of action or theory of liability will be limited to the direct damages recoverable under law, but not to exceed sixty-eight million [\$68,000,000] (which is approximately the total value of the contract for the system purchase agreement and an eighteen year maintenance and upgrade agreement). NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement.

Article 7 Payment of Taxes

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor at least fourteen (14) calendar days prior written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders for Motorola and third party Equipment and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) Contractor's reasonable estimate of the unpaid portion of the System Purchase Price attributable to the work performed through the effective date of the termination plus any reasonable and actually incurred costs or expenses to effect the termination. If the City disagrees with this estimate, the Parties will negotiate in good faith a fair and reasonable amount to settle the disagreement. If after 30 days the Parties are unable to agree upon a fair and reasonable settlement amount, then the reasonable determination of the amount by the Director of the Office of Contract Administration will be conclusive.

(b) In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, City shall immediately notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which the appropriation was made without penalty. To the extent Contractor has delivered Equipment or performed Services prior to the last day of the fiscal year for which the appropriation was made, City shall be liable for the price of such Equipment or Services.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor’s final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

Section 3.4	Submitting False Claims.	Section 10.4	Nondisclosure of Private, Proprietary or Confidential Information
Section 4.5	Assignment	Section 10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	Section 10.27	Compliance with Laws
Article 7	Payment of Taxes		

The notice and opportunity to cure provisions of (b) below apply.

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of thirty (30) calendar days after written notice thereof from City to Contractor. In the event of a potential Event of Default, the City shall provide Contractor written notice with an opportunity to cure (“Notice of Potential Claim”). The cure duration shall be thirty (30) days from the date of Notice of Potential Claim.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any

substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, unless otherwise expressly provided herein, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, if Contractor fails to cure an Event of Default or fails to develop a cure plan acceptable to City, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by both registered mail to the address set forth in Article 11 as well as by email.

8.3 **Non-Waiver of Rights.** 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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

Article 3	Payment Obligation	Section 10.23.1	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	Section 10.24	Agreement Made in California; Venue
Section 6.1	Liability of City	Section 10.25	Construction
Section 6.3	Limitation of Liability	Section 10.26	Entire Agreement

Article 7	Payment of Taxes	Section 10.27	Compliance with Laws
Section 9.1	Ownership of Documentary Deliverables	Section 10.28	Severability
Section 10.4	Nondisclosure of Private, Proprietary or Confidential Information		

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City provided that City has paid or pays for such items except if the City is unable to pay because the termination is for non-appropriation of funds.

8.4.3 Any warranty that has not expired at the end of the term of this agreement survives the termination date as provided in Article 2.

Article 9 Rights In Deliverables

9.1 **Ownership of Documentary Deliverables.** The term “Documentary Deliverable” means any document that Contractor (i) has prepared exclusively for the City and not for more general purposes and (ii) has delivered to the City as promised under this Agreement. This term excludes any underlying Proprietary Rights, tools or know how used to create the Documentary Deliverable. Upon Contractor’s delivery of the Documentary Deliverable to City, it shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies to support its business with City and for reference and as documentation of its experience and capabilities.

9.2 Licensing of Software.

Any Motorola Software, including related documentation and any subsequent releases, is licensed to City solely in accordance with the Software License Agreement (Appendix H). Software warranties are addressed in Section 4.6 above and in the applicable Software License Agreement. This Agreement does not involve any source code except for Open Source Software. Any Non-Motorola Software is licensed to City in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Contractor the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor’s rights and protections under the Software License Agreement concerning its Software.

9.3 **Cooperation.** The Parties will cooperate with each other to execute such other documents as may be necessary or appropriate to achieve the objectives of this Section in order to ensure that the Documentary Deliverables are appropriately assigned to the City.

9.4 **Residuals.** In no event will Contractor be precluded from developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables, as long as Contractor does not use any Proprietary or Confidential Information of the City in such development. In addition, Contractor will be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services. Residuals are limited to information that exists in non-tangible form that is retained in the unaided memory of Contractor.

9.5 **Works for Hire.** This Agreement does not involve any works for hire.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor who is a recipient of such Private Information shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

10.4.3 During the term of this Agreement, the Parties may provide each other with Confidential Information. Subject to the requirements of any applicable public records law, each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

10.4.4 Contractor, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Contractor in connection with providing to City the Equipment, Software, or Services remain vested exclusively in Contractor, and this Agreement does not grant to City any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Contractor does not grant to City, either directly or by implication, estoppel, or otherwise, any right, title or interest in Contractor's Proprietary Rights. City will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

10.5 **Nondiscrimination Requirements**

10.5.1 **Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall

incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 5% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering,

purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Consideration of Criminal History in Hiring and Employment Decisions

10.12.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.12.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application

in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.13 **Reserved (Public Access to Nonprofit Records and Meetings).**

10.14 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.15 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.16 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.17 **Reserved. (Preservative Treated Wood Products).** General Provisions

10.18 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Michelle Geddes
1011 Turk St.
San Francisco, CA 94102
Michelle.geddes@sfgov.org

To Contractor: Brian White
11700 Arena Way
Rancho Cordova, CA 95742
brian.white@motorolasolutions.com
(847) 980-4478

Payments to Contractor shall be made to the following address:

Motorola Solutions, Inc.
13108 Collections Center Drive

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

10.19 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

10.20 **Reserved. (Payment Card Industry ("PCI") Requirements).**

10.21 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law. Contractor's records that are Confidential Information are exempt under the trade secret and possibly other exemptions from disclosure.

10.22 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 10.18, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

10.23 **Dispute Resolution Procedure.**

10.23.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. After written notice the City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement until such failure or refusal has been corrected. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon

alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

10.23.2 / **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

10.24 / **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

10.25 / **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

10.26 / **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

10.27 / **Compliance with Laws.** Contractor and City shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. City will comply with all FCC licenses and authorizations required for the installation, operation and use of the System.

10.28 / **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.29 / **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this

Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

10.30 **Order of Precedence.** Contractor agrees to perform the Services described below in accordance with the terms and conditions of this Agreement (including the Appendices), implementing task orders, the RFP, and Contractor's proposal dated January 6, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. Entire Agreement and Order of Precedence. This Agreement sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 10.22, "Modification of Agreement." In the event of a conflict or ambiguity between the terms of this Agreement and the SOW, this Agreement shall prevail.

Article 11 MacBride And Signature

11.1 **MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY /

CONTRACTOR /

Recommended by:

Motorola Solutions, Inc.



per

Anne Kronenberg
Executive Director
Department of Emergency Management

Micah Applewhite
MSSSI Vice President
Motorola Solutions, Inc.
10680 Treena St., #200
San Diego, CA 92131

Approved as to Form:

City vendor number: 12872 /

Dennis J. Herrera
City Attorney /

By:

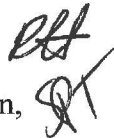


Margarita Gutierrez
Deputy City Attorney

Approved:



Jaci Fong
Director of the Office of Contract Administration,
and Purchaser



Appendices

- A: Statement of Work
- B: Project Schedule
- C: System Description
- D: Equipment List
- E: Acceptance Test Plan
- F: Training Plan
- G: Warranty Services
- H: Software License Agreement
- I: Migration Plan
- J: Calculation of Charges, including the payment milestone schedule

