

ORIGINAL

CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089713-21-K, RADIO COMMUNICATION, EMERGENCY RESPONSE AND MOBILE INTEROPERABILITY EQUIPMENT AND SUPPORTING SERVICES

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089713-21-K, Radio Communication, Emergency Response and Mobile Interoperability equipment and Supporting Services (Contractor).

RECITALS

On or about 11/3/2020, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the Radio Communication, Emergency Response and Mobile Interoperability equipment and Supporting Services described herein.

City wishes to retain Contractor to provide Radio Communication, Emergency Response and Mobile Interoperability equipment and Supporting Services, as further described in the Scope of Work, attached hereto as Exhibit B (Goods and Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE I CONTRACTOR SERVICES

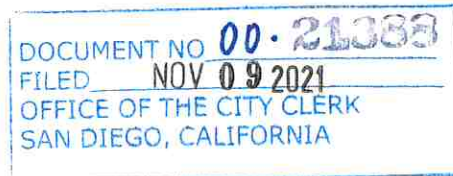
1.1 Scope of Work. Contractor shall provide the Goods and Services to City as described in Exhibits B and F which are incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Goods and Services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

ARTICLE II DURATION OF CONTRACT

2.1 Term. This Contract shall be for a period of ten (10) years beginning on the Effective Date. Unless otherwise terminated as provided for herein, this Contract shall be effective until the tenth anniversary of the Effective Date of the Contract. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.



**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$51,050,000.

NT
Neil Thomas (Oct 15, 2021 15:54 PDT)

**ARTICLE IV
RESERVED**

Adobe Sign Transaction Number: CBJCHBCAABAAX8hkPe7iyi3CbJbQkNWORKZE77zxYIR5

**ARTICLE V
CONTRACT DOCUMENTS**

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; Contractor's fully executed Exhibits B, E and F, the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the Goods and Services to be provided. Contractor will provide any Goods and Services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe Goods and Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st Any properly executed written amendment to the Contract
- 2nd The Special Provisions to the Contract (Exhibit D)
- 3rd The Contract
- 4th The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 5th Contractor's Response to the RFP and Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

Motorola Solutions, Inc.

Proposer

10680 Treena St., Ste 200

Street Address

San Diego

City

917-583-7119

Telephone No.

neil@motorolasolutions.com

E-Mail

CITY OF SAN DIEGO

A Municipal Corporation

BY:



Print Name:

Matthew Vespi

Chief Financial Officer & Contracting Department

Dec 17, 2021

Date Signed

BY:


Neil Thomas (Oct 27, 2021 17:00 CDT)

Signature of
Proposer's Authorized
Representative

Neil Thomas

Print Name

Vice President

Title

Oct 27, 2021

Date

Approved as to form this 17 day of

December, 2021.

MARA W. ELLIOTT, City Attorney

BY: 
Steven Lastomirsky (Dec 17, 2021 14:31 PST)

Deputy City Attorney

Adobe Sign Transaction Number: CBJCHBCAABAavxfv7xLodP57biFwZYARAPdZpYk9qN00



Purchasing & Contracting Department

September 24, 2021

VIA EMAIL TO: micahapplewhite@motorolasolutions.com

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

Subject: Request for Proposal (RFP) No. 10089713-21-K, Radio Communication, Emergency Response and Mobile Interoperability Equipment and Supporting Services

Dear Mr. Applewhite:

Exhibit A, item A.2.2 of the subject RFP, states, in pertinent part: “Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer’s exceptions, reject proposer’s exceptions and deem the proposal non-responsive, or award the Contract without proposer’s proposed exceptions.”

This letter confirms our agreement to modify the terms of the Contract relating to the above-referenced solicitation. The Parties agree as follows:

1. Section 5.1 of Article V Contract Documents of the Contract, shall be deleted in its entirety and replaced with the following:

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; Contractor’s fully executed Exhibits B, E and F, the Notice to Proceed; Contractor’s Proposal; and the City’s written acceptance of exceptions or clarifications to the RFP, if any

2. Section 5.3 of Article V Contract Documents of the Contract, shall be deleted in its entirety and replaced with the following:

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st Any properly executed written amendment to the Contract
- 2nd The Special Provisions to the Contract (Exhibit D)
- 3rd The Contract

Exception and Clarification Letter – Motorola – RFP 10089713-21-K
Effective: October 15, 2014
OCA Document No. 884843

- 4th Contractor's Response to the RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 5th The RFP

3. Section F. 1. Insurance Documents of Exhibit A, request to add the following statement has been **rejected**:

“Final insurance documents will be provided upon contract execution per agreed to terms of insurance”

4. Section 4.1 City's Right to Suspend for Convenience of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“Contractor will be compensated for reasonable costs incurred in suspending and re-mobilizing the work”

5. Section 4.2 City's Right to Terminate for Convenience of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“10 year”

6. Section 4.3.1 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

If Contractor fails to satisfactorily cure a default, or provide a written plan to cure the default, within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

7. Section 4.5.1 Termination for Convenience of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“Notwithstanding anything contained herein to the contrary, if City terminates this Contract before the end of the term, for any reason other than Contractor's default, then the City will pay to Contractor a termination fee equal to the discount applied to the remaining years of the Contract.”

8. Section 4.5.2 Termination for Default of Exhibit C, General Contract Terms and Provisions, request to reference the following section has been **rejected**:

“4.5.1.”

9. Section 5.2 Responsibility for Lost or Damaged Shipments of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“business unit to price in”

10. Section 5.5.1 of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“If City (including its other contractors) delays the performance schedule, it will make the promised payments according to the payment schedule as if no delay occurred; and the Parties will execute a change order to extend the performance schedule and, if requested, compensate Contractor for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Contractor or its subcontractors for additional freight, warehousing and handling of equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.”

11. Section 5.11 Duty to Cooperate with Auditor of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“at a time and place acceptable to Contractor.”

12. Section 6.1 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

6.1 Rights in Data. If Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials) for the City, all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor’s work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor’s work on behalf of the City, without the prior written consent of the City.

13. Section 6.2 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights. Notwithstanding anything to contrary contained in this Contract, Contractor, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the software and documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the software and documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the software or documentation, whether made by Contractor or another party, or any improvements that result from Contractor's processes or, provision of information services). No rights are granted to City under this Contract by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Contract. All intellectual property developed, originated, or prepared by Contractor in connection with providing the software, designated products, documentation or related services, remains vested exclusively in Contractor, and City will not have any shared development or other intellectual property rights.

14. Section 6.5 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

6.5 Intellectual Property Indemnification. Contractor will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that the equipment manufactured by Contractor or the Contractor software ("Contractor Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: City promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise (except that Contractor acknowledges and agrees that the City's Council may need to approve settlements above a certain dollar threshold); and City providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all

damages finally awarded against City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for City the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant City a credit for the Contractor Product.

Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Contractor 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 Contractor Product; (c) Contractor Product designed or manufactured in accordance with City's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Contractor Product by a party other than Contractor; (e) use of the Contractor Product in a manner for which the Contractor Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by City to install an enhancement release to the Contractor Software that is intended to correct the claimed infringement provided that Contractor provides a minimum of ninety (90) days advance notice. In no event will Contractor's liability resulting from its indemnity obligation to City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from City from sales or license of the infringing Contractor Product.

This Section provides City's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. City has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim.

15. Section 6.6 Software Licensing of Exhibit C, General Contract Terms and Provisions, request to add the following statement has been **rejected**:

“to the best of its knowledge”

16. Section 7.1 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its

subcontractors), expense, and liability of every kind, nature and description to the extent the claims arise out of Contractor's negligence, or the negligence of any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify and protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

Contractor's total liability for direct damages under this Agreement, shall be limited in the aggregate to the total fees paid or payable under this Agreement during the twenty-four (24) month period preceding the date on which the first claim arose (it being the understanding of the parties that identifying the "first" claim will establish the beginning point for such period), except that if such event arises during the first contract year, then such amount shall be equal to the estimated fees to be paid by client under this Agreement during the first twenty-four (24) months of the term, and further provided that the limitations contained in this Agreement upon the types and amounts of Contractor's liability shall not apply to the extent resulting from the recklessness, bad faith, gross negligence or intentional misconduct of Contractor or its subcontractors, or to claims subject to (or amounts payable by) Contractor pursuant to vendor's indemnification obligations hereunder or to personal injury or death that result from Contractor's action. Notwithstanding the foregoing, although the parties acknowledge the possibility of such losses or damages, they agree that Contractor will not be liable for any special, incidental, indirect, or consequential damages in any way related to or arising from this Agreement, the sale or use of the equipment or software, or the performance of services by contractor pursuant to this Agreement. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

17. All sections and subsections of 7.2 shown below of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance protecting Contractor against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors. Contractor shall provide, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits of \$1,000,000 per occurrence. If a general aggregate limit applies the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit of \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of \$1,000,000 per accident for bodily injury or disease.

7.2.4 Reserved.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be included as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 0413

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall not be canceled, except with notice to City.

7.2.5.5 Reserved.

18. Section 7.5 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

7.5 Verification of Coverage. Contractor shall furnish City with PDF certificates and required amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all Certificates of Insurance and endorsements required by these specifications, at any time. In the event of dispute between the additional insured and the insurance company specifically related to a litigated matter, the City has the right to review the Contractor's insurance policy at an agreed upon location.

19. Section 7.6 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances with written agreement.

20. Section 7.9 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on the general liability and automobile liability (if applicable) insurance required from subcontractors.

21. Section 12.2 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance according to the portion of fees attributable to Contractor.

22. Section 13.2 of Exhibit C, General Contract Terms and Provisions, shall be deleted in its entirety and replaced with the following:

13.2. Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

Notwithstanding the foregoing, Contractor may, with the City's prior written consent, which will not be unreasonably withheld, assign this Contract to any of its affiliates or its right to receive payment. In addition, in the event Contractor separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Contractor may, with City's written consent, which will not be unreasonably withheld, assign this Contract such that it will continue to benefit the Separated Business and its affiliates (and Contractor and its affiliates, to the extent applicable) following the Separation Event. Contractor may subcontract any of the work provided that City is provided with required information on subcontractors and approves their use, but subcontracting will not relieve Contractor of its duties under this Contract.

23. Section 2 of Exhibit D, Special Contract Provisions, shall be deleted in its entirety and replaced with the following:

2. Most-favored Customer. If Contractor, at any time during this Agreement, routinely enters into agreements with the County of San Diego, and offers the same or substantially the same products/services offered to the City on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to the City, Contractor shall notify City within ten (10) business days thereafter of that offering and this Agreement shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein the Contractor shall provide the same prices, warranties, benefits, or terms to the City. The City shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If Contractor is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered the County of San Diego during the term of this Contract is not in fact most favored treatment, Contractor shall within ten (10) business days notify the City in writing, setting forth the detailed reasons the Contractor believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. The City, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Agreement between the City and Contractor shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to the City.

24. Section 15 of Exhibit D, Special Contract Provisions, shall be deleted in its entirety and replaced with the following:

15. Insurance Requirements. The insurance requirements herein supersede the insurance requirements in Exhibit C, General Contract Terms and Conditions.

a. Contractor must have the following insurance and coverage minimums:

i. Reserved.

ii. Reserved.

iii. Property Damage or Destruction insurance is required for coverage of City-owned Hardware and equipment while in the Contractor's possession, custody, or control. The minimum Single Occurrence limit is \$500,000 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways. E.g., under an Inland Marine policy, as part of Automobile coverage, or under Garage Keepers policy. In any event, the coverage must be specifically and clearly listed on insurance certificate(s) submitted to the City.

b. Insurance coverage shall be in effect for the length of any contract made pursuant to this RFP, and for any extensions thereof, plus the days/months required to deliver any outstanding order after the close of the contract period.

- c. Reserved.
- d. Reserved.
- e. City reserves the right to contact insurance undertakers to confirm policy and certificate issuance and document accuracy.

25. Additional Contract Requirements, shall be added as described below:

The language provided in the referenced documents below shall be incorporated into Contract to the extent it is applicable to Contractor:

1. FEMA Policy #405-143-1- Appendix A - Contract Provision Regarding Prohibition on Contracting for Covered Telecommunications Equipment or Services (**Appendix A**).
2. Title 2 – Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (**Appendix B**).


26. The following language shall replace the original language in “Discount Overview” in Section C1, Table 2 of Tab C Cost/Price Proposal (page 233) of Contractor's proposal:

The following discounts shall apply to the initial order and all subsequent orders:

- Contract discount levels off MSRP (list price): 27.5% off radios, 25% off accessories.
- Over the ten-year term of the contract any radio order over \$1,000,000 will receive an additional 10% discount off list price.
- Additional 10% off list price of radios if purchase order received prior to December 29, 2021.

Please indicate your agreement with the above by signing the bottom of this letter. Thank you for your assistance.

Sincerely,



Sandra M. Vasquez
Supervising Procurement Contracting Officer, Purchasing & Contracting

This Letter is executed by the City and Contractor acting by and through their authorized officers.

MOTOROLA SOLUTIONS, INC.

By: Neil Thomas

Name: Neil Thomas

Title: AVP Sales, West Region

Date: September 27, 2021

THE CITY OF SAN DIEGO

By: 

Name: Matthew Vespi

Title: Chief Financial Officer

Date: Dec 17, 2021

Attachments: Appendix A
Appendix B
Original Exception Requests

Certificate Of Completion

Envelope Id: 42BCA41528304BCA88D61772A7AD4D43	Status: Completed
Subject: Please DocuSign: City of San Diego _ Motorola Exceptions and Clarifications letter-RFP 10089713...	
Source Envelope:	
Document Pages: 28	Signatures: 1
Certificate Pages: 5	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Joy Munoz
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	500 West Monroe
	Chicago, IL 60661
	joy.munoz@motorolasolutions.com
	IP Address: 140.101.170.253

Record Tracking

Status: Original	Holder: Joy Munoz	Location: DocuSign
9/27/2021 1:51:19 PM	joy.munoz@motorolasolutions.com	

Signer Events

Signer Events	Signature	Timestamp
Neil Thomas neil.thomas@motorolasolutions.com Security Level: Email, Account Authentication (None)	<i>Neil Thomas</i> Signature Adoption: Pre-selected Style Using IP Address: 70.122.149.164 Signed using mobile	Sent: 9/27/2021 2:02:27 PM Viewed: 9/27/2021 2:03:42 PM Signed: 9/27/2021 2:04:08 PM

Electronic Record and Signature Disclosure:
Accepted: 9/27/2021 2:03:42 PM
ID: 35e31f5d-0f26-48a4-a527-f70a7fe14951

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Ryan Christensen
ryan.christensen@motorolasolutions.com
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 9/27/2021 2:02:27 PM

Joy Munoz
joy.munoz@motorolasolutions.com
Motorola Solutions, Inc.
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 9/27/2021 2:02:28 PM
Resent: 9/27/2021 2:04:12 PM
Viewed: 9/27/2021 2:03:01 PM

Mike Fink
mike.fink@motorolasolutions.com
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:

COPIED

Sent: 9/27/2021 2:02:28 PM

Carbon Copy Events	Status	Timestamp
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Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/27/2021 2:02:28 PM
Certified Delivered	Security Checked	9/27/2021 2:03:42 PM
Signing Complete	Security Checked	9/27/2021 2:04:08 PM
Completed	Security Checked	9/27/2021 2:04:08 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure



APPENDIX A

Contract Provision Regarding Prohibition on Contracting for Covered Telecommunications Equipment or Services

For FEMA awards, recipients and subrecipients, as well as their contractors and subcontractors, may use the following contract provision in new, extended, or renewed contracts and subcontracts.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—
- (b) *Prohibitions.*
- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.



(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:


- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.



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(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

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 Displaying title 2, up to date as of 9/13/2021. Title 2 was last amended 6/02/2021.

APPENDIX B

Title 2

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

A.3 EXCEPTIONS

ARTICLE V CONTRACT DOCUMENTS

- 5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; Contractor's fully executed Exhibits B, E and F, the Notice to Proceed; [Contractor's Proposal](#); and the City's written acceptance of exceptions or clarifications to the RFP, if any.
- 5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:
- 1st Any properly executed written amendment to the Contract
 - 2nd The Special Provisions to the Contract (Exhibit D)
 - 3rd The Contract
 - 4th [Contractor's Response to the RFP and Pricing](#) ~~The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any~~
 - 5th [Contractor's Response to the RFP and Pricing](#) ~~The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any.~~

EXHIBIT A, PROPOSAL SUBMISSION AND REQUIREMENTS

- F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C within ten (10) business days from the date on the Notice to Proceed letter:
1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

[Final insurance documents will be provided upon contract execution per agreed to terms of insurance.](#)



THE CITY OF SAN DIEGO, GENERAL CONTRACT TERMS AND PROVISIONS APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE IV SUSPENSION AND TERMINATION

- 4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties. [Contractor will be compensated for reasonable costs incurred in suspending and re-mobilizing the work.](#)
- 4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this [\(10 year\)](#) Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.
- 4.3.1 If Contractor fails to satisfactorily cure a default, [or provide a written plan to cure the default](#), within ~~ten-thirty (310)~~ calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

- 4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date. Notwithstanding anything contained herein to the contrary, if City terminates this Contract before the end of the term, for any reason other than Contractor's default, then the City will pay to Contractor a termination fee equal to the discount applied to the remaining years of the Contract.
- 4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3-25.1. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE V, ADDITIONAL CONTRACTOR OBLIGATIONS

- 5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City (Business unit to price in). City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.
- 5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.
- 5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain



materials, equipment, or labor, in which case City's approval must be in writing.

If City (including its other contractors) delays the performance schedule, it will make the promised payments according to the payment schedule as if no delay occurred; and the Parties will execute a change order to extend the performance schedule and, if requested, compensate Contractor for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Contractor or its subcontractors for additional freight, warehousing and handling of equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

- 5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance at a time and place acceptable to Contractor. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

- 6.1 Rights in Data. If, ~~in connection with the services performed under this Contract,~~ Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials) for the City, all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.
- 6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials.



Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights. Notwithstanding anything to contrary contained in this Contract, Contractor, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the software and documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the software and documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the software or documentation, whether made by Contractor or another party, or any improvements that result from Contractor's processes or, provision of information services). No rights are granted to City under this Contract by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Contract. All intellectual property developed, originated, or prepared by Contractor in connection with providing the software, designated products, documentation or related services, remains vested exclusively in Contractor, and City will not have any shared development or other intellectual property rights.

6.5 Intellectual Property ~~Warranty and~~ Indemnification. Contractor will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that the equipment manufactured by Contractor or the Contractor software ("Contractor Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: City promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and City providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for City the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant City a credit for the Contractor Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Contractor 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 Contractor Product; (c) Contractor Product designed or manufactured in accordance with City's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Contractor Product by a party other than Contractor; (e) use of the Contractor



Product in a manner for which the Contractor Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by City to install an enhancement release to the Contractor Software that is intended to correct the claimed infringement. In no event will Contractor's liability resulting from its indemnity obligation to City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from City from sales or license of the infringing Contractor Product.

This Section provides City's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. City has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

- 6.6 Software Licensing. Contractor represents and warrants that, to the best of its knowledge, the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

ARTICLE VII INDEMNIFICATION AND INSURANCE

- 7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, and protect, ~~and hold harmless~~ City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind,



nature and description ~~to the extent (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that the claims arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor~~ Contractor's negligence, or the negligence of any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, ~~and~~ protect ~~and hold harmless~~ shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

Except for personal injury or death, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or implementation and other one-time Services with respect to which losses or damages are claimed. With respect to all subscription or other ongoing Services and unless as otherwise provided under the applicable Addenda, Contractor's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance protecting Contractor against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors. Contractor shall provide, ~~at a minimum~~, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits ~~no less than~~ of \$1,000,000 per occurrence. If a general aggregate limit applies, ~~either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.~~



- 7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit ~~no less than~~ of \$1,000,000 per accident for bodily injury and property damage.
- 7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of ~~no less than~~ \$1,000,000 per accident for bodily injury or disease.
- 7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit ~~no less than~~ pf \$1,000,000 per ~~occurrence or~~ claim, \$2,000,000 aggregate.

~~If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.~~

- 7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- 7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered-included as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 ~~11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used~~)-0413
- 7.2.5.2 Primary Coverage. For any claims related to this contract,
Contractor's insurance coverage shall be primary ~~coverage at least as broad as ISO CG 20 01 0413 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.~~
- 7.2.5.3 Notice of Cancellation. Each insurance policy required above shall ~~provide that coverage shall~~ not be canceled, except with notice to City.
- 7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date ~~must be shown, and~~ must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for ~~at least fiveone (15) years~~ after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with

another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a ~~minimum of five~~one (15) years after completion of work.

7.5 Verification of Coverage. Contractor shall furnish City with ~~original PDF~~ certificates and required amendatory endorsements ~~or copies of the applicable policy language~~ effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor’s obligation to provide them. ~~City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.~~

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances with written agreement.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance ~~meeting all the requirements stated herein per their scope of work~~, and Contractor shall ensure that City is an additional insured on the general liability and automobile liability(if applicable) insurance required from subcontractors. ~~For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.~~

ARTICLE XII MANDATORY ASSISTANCE

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance according to the portion of fees attributable to Contractor.

ARTICLE XIII MISCELLANEOUS

13.2. Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City’s prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City’s sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

Notwithstanding the foregoing, Contractor may assign this Contract to any of its affiliates or its right to receive payment without the prior consent of City. In addition, in the event Contractor separates one or more of its businesses (each a “Separated Business”), whether by way of a sale,



establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Contractor may, without the prior written consent of the other Party and at no additional cost to Contractor, assign this Contract such that it will continue to benefit the Separated Business and its affiliates (and Contractor and its affiliates, to the extent applicable) following the Separation Event. Contractor may subcontract any of the work, but subcontracting will not relieve Contractor of its duties under this Contract.

EXHIBIT D – SPECIAL CONTRACT PROVISIONS

2. ~~Most-favored Customer. Reserved. If Contractor, at any time during this Agreement, routinely enters into agreements with other governmental customers, and offers the same or substantially the same products/services offered to the City on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to the City, Contractor shall notify City within ten (10) business days thereafter of that offering and this Agreement shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein the Contractor shall provide the same prices, warranties, benefits, or terms to the City. The City shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If Contractor is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, Contractor shall within ten (10) business days notify the City in writing, setting forth the detailed reasons the Contractor believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. The City, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Agreement between the City and Contractor shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to the City.~~
15. ~~Insurance Requirements. The insurance requirements herein supersede the insurance requirements in Exhibit C, General Contract Terms and Conditions.~~
(Motorola will comply with insurance for this contract under section 7.2 per redline.)
 - a. ~~Contractor must have the following insurance and coverage minimums:~~
 - i. ~~General liability insurance with a Single Occurrence limit of at least \$1,000,000, and a General Aggregate limit of at least two times the Single Occurrence limit.~~
 - ii. ~~Product liability insurance with a Single Occurrence of at least \$1,000,000 and a General Aggregate limit of at least two times the Single Occurrence limit for all products.~~
 - iii. ~~Property Damage or Destruction insurance is required for coverage of City owned Hardware and equipment while in the Contractor’s possession,~~



~~custody, or control. The minimum Single Occurrence limit is \$500,000 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways. E.g., under an Inland Marine policy, as part of Automobile coverage, or under Garage Keepers policy. In any event, the coverage must be specifically and clearly listed on insurance certificate(s) submitted to the City.~~


~~b. — Insurance coverage shall be in effect for the length of any contract made pursuant to this RFP, and for any extensions thereof, plus the days/months required to deliver any outstanding order after the close of the contract period.~~

~~c. — Original insurance certificates must be furnished to the City upon request, showing Contractor as the insured and showing coverage and limits for the insurance listed above.~~

~~d. — If any products or Hardware or Service(s) will be provided by Parties other than Contractor, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by City, a separate insurance certificate must be submitted for each such party.~~

~~e. — City reserves the right to contact insurance undertakers to confirm policy and certificate issuance and document accuracy.~~

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 Displaying title 2, up to date as of 9/13/2021. Title 2 was last amended 6/02/2021.

APPENDIX B

Title 2

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

A.3 EXCEPTIONS

ARTICLE V CONTRACT DOCUMENTS

- 5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; Contractor's fully executed Exhibits B, E and F, the Notice to Proceed; [Contractor's Proposal](#); and the City's written acceptance of exceptions or clarifications to the RFP, if any.
- 5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:
- 1st Any properly executed written amendment to the Contract
 - 2nd The Special Provisions to the Contract (Exhibit D)
 - 3rd The Contract
 - 4th [Contractor's Response to the RFP and Pricing](#) ~~The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any~~
 - 5th [Contractor's Response to the RFP and Pricing](#) ~~The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any.~~

EXHIBIT A, PROPOSAL SUBMISSION AND REQUIREMENTS

- F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C within ten (10) business days from the date on the Notice to Proceed letter:
1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

[Final insurance documents will be provided upon contract execution per agreed to terms of insurance.](#)



THE CITY OF SAN DIEGO, GENERAL CONTRACT TERMS AND PROVISIONS APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE IV SUSPENSION AND TERMINATION

- 4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties. [Contractor will be compensated for reasonable costs incurred in suspending and re-mobilizing the work.](#)
- 4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this [\(10 year\)](#) Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.
- 4.3.1 If Contractor fails to satisfactorily cure a default, [or provide a written plan to cure the default](#), within ~~ten-thirty (340)~~ calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

- 4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date. Notwithstanding anything contained herein to the contrary, if City terminates this Contract before the end of the term, for any reason other than Contractor's default, then the City will pay to Contractor a termination fee equal to the discount applied to the remaining years of the Contract.
- 4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3-25.1. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE V, ADDITIONAL CONTRACTOR OBLIGATIONS

- 5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City (Business unit to price in). City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.
- 5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.
- 5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain

materials, equipment, or labor, in which case City's approval must be in writing.

If City (including its other contractors) delays the performance schedule, it will make the promised payments according to the payment schedule as if no delay occurred; and the Parties will execute a change order to extend the performance schedule and, if requested, compensate Contractor for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Contractor or its subcontractors for additional freight, warehousing and handling of equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

- 5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance at a time and place acceptable to Contractor. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

- 6.1 Rights in Data. If, ~~in connection with the services performed under this Contract,~~ Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials) for the City, all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.
- 6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials.



Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights. Notwithstanding anything to contrary contained in this Contract, Contractor, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the software and documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the software and documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the software or documentation, whether made by Contractor or another party, or any improvements that result from Contractor's processes or, provision of information services). No rights are granted to City under this Contract by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Contract. All intellectual property developed, originated, or prepared by Contractor in connection with providing the software, designated products, documentation or related services, remains vested exclusively in Contractor, and City will not have any shared development or other intellectual property rights.

6.5 Intellectual Property ~~Warranty and~~ Indemnification. Contractor will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that the equipment manufactured by Contractor or the Contractor software ("Contractor Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: City promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and City providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for City the right to continue using the Contractor Product; (b) replace or modify the Contractor Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Contractor Product and grant City a credit for the Contractor Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Contractor 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 Contractor Product; (c) Contractor Product designed or manufactured in accordance with City's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Contractor Product by a party other than Contractor; (e) use of the Contractor

Product in a manner for which the Contractor Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by City to install an enhancement release to the Contractor Software that is intended to correct the claimed infringement. In no event will Contractor's liability resulting from its indemnity obligation to City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from City from sales or license of the infringing Contractor Product.

This Section provides City's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. City has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

- 6.6 Software Licensing. Contractor represents and warrants that, to the best of its knowledge, the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

ARTICLE VII INDEMNIFICATION AND INSURANCE

- 7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, and protect, ~~and hold harmless~~ City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind,



nature and description ~~to the extent (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation)~~ that the claims arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor Contractor's negligence, or the negligence of any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, ~~and~~ protect ~~and hold harmless~~ shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

Except for personal injury or death, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or implementation and other one-time Services with respect to which losses or damages are claimed. With respect to all subscription or other ongoing Services and unless as otherwise provided under the applicable Addenda, Contractor's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance protecting Contractor against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors. Contractor shall provide, ~~at a minimum~~, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits ~~no less than~~ of \$1,000,000 per occurrence. If a general aggregate limit applies, ~~either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or~~ the general aggregate limit shall be twice the required occurrence limit.

- 7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit ~~no less than~~ of \$1,000,000 per accident for bodily injury and property damage.
- 7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of ~~no less than~~ \$1,000,000 per accident for bodily injury or disease.
- 7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit ~~no less than~~ pf \$1,000,000 per ~~occurrence or~~ claim, \$2,000,000 aggregate.

~~If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.~~

- 7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- 7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered-included as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 ~~11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used~~)-0413
- 7.2.5.2 Primary Coverage. For any claims related to this contract,

Contractor's insurance coverage shall be primary-~~coverage at least as broad as ISO CG 20 01 0413 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.~~
- 7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.
- 7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date ~~must be shown, and~~ must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least fiveone (15) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with

another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a ~~minimum of five~~one (15) years after completion of work.

- 7.5 Verification of Coverage. Contractor shall furnish City with ~~original PDF~~ certificates and required amendatory endorsements ~~or copies of the applicable policy language~~ effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor’s obligation to provide them. ~~City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.~~
- 7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances with written agreement.
- 7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance ~~meeting all the requirements stated herein per their scope of work~~, and Contractor shall ensure that City is an additional insured on the general liability and automobile liability(if applicable) insurance required from subcontractors. ~~For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.~~

ARTICLE XII MANDATORY ASSISTANCE

- 12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance according to the portion of fees attributable to Contractor.

ARTICLE XIII MISCELLANEOUS

- 13.2. Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City’s prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City’s sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

Notwithstanding the foregoing, Contractor may assign this Contract to any of its affiliates or its right to receive payment without the prior consent of City. In addition, in the event Contractor separates one or more of its businesses (each a “Separated Business”), whether by way of a sale,

establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Contractor may, without the prior written consent of the other Party and at no additional cost to Contractor, assign this Contract such that it will continue to benefit the Separated Business and its affiliates (and Contractor and its affiliates, to the extent applicable) following the Separation Event. Contractor may subcontract any of the work, but subcontracting will not relieve Contractor of its duties under this Contract.

EXHIBIT D – SPECIAL CONTRACT PROVISIONS

2. ~~Most-favored Customer. Reserved. If Contractor, at any time during this Agreement, routinely enters into agreements with other governmental customers, and offers the same or substantially the same products/services offered to the City on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to the City, Contractor shall notify City within ten (10) business days thereafter of that offering and this Agreement shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein the Contractor shall provide the same prices, warranties, benefits, or terms to the City. The City shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If Contractor is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, Contractor shall within ten (10) business days notify the City in writing, setting forth the detailed reasons the Contractor believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. The City, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Agreement between the City and Contractor shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to the City.~~
15. ~~Insurance Requirements. The insurance requirements herein supersede the insurance requirements in Exhibit C, General Contract Terms and Conditions.~~
(Motorola will comply with insurance for this contract under section 7.2 per redline.)
 - a. ~~Contractor must have the following insurance and coverage minimums:~~
 - i. ~~General liability insurance with a Single Occurrence limit of at least \$1,000,000, and a General Aggregate limit of at least two times the Single Occurrence limit.~~
 - ii. ~~Product liability insurance with a Single Occurrence of at least \$1,000,000 and a General Aggregate limit of at least two times the Single Occurrence limit for all products.~~
 - iii. ~~Property Damage or Destruction insurance is required for coverage of City owned Hardware and equipment while in the Contractor’s possession,~~

~~custody, or control. The minimum Single Occurrence limit is \$500,000 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways. E.g., under an Inland Marine policy, as part of Automobile coverage, or under Garage Keepers policy. In any event, the coverage must be specifically and clearly listed on insurance certificate(s) submitted to the City.~~

~~b. — Insurance coverage shall be in effect for the length of any contract made pursuant to this RFP, and for any extensions thereof, plus the days/months required to deliver any outstanding order after the close of the contract period.~~

~~c. — Original insurance certificates must be furnished to the City upon request, showing Contractor as the insured and showing coverage and limits for the insurance listed above.~~

~~d. — If any products or Hardware or Service(s) will be provided by Parties other than Contractor, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by City, a separate insurance certificate must be submitted for each such party.~~

~~e. — City reserves the right to contact insurance undertakers to confirm policy and certificate issuance and document accuracy.~~