

INTRODUCED BY: COUNCIL MEMBER (s) Renter

1 **AN ORDINANCE TO UTILIZE THE MOTOROLA CONTRACT 10-**
2 **23172/CR WITH MOTOROLA SOLUTIONS, INC. FOR THE**
3 **COMMUNICATIONS SYSTEM AGREEMENT UNDER THE MOTOROLA –**
4 **JEFFERSON COUNTY P25 RADIO SYSTEM WITH JEFFERSON COUNTY**
5 **9-1-1 DISPATCH FOR THE DEPARTMENT OF THE SHERIFF AND TO**
6 **AUTHORIZE THE EXECUTION OF A PURCHASE.**

7 **WHEREAS**, Jefferson County, Missouri, (hereafter, the “County”) received
8 issuance of a Communications System Agreement under the Motorola – Jefferson County
9 P25 Radio System with Motorola Solutions, Inc., Motorola Contract 10-23172/CR with
10 Jefferson County 9-1-1 Dispatch for the purchase of equipment, software and related
11 services; and

12 **WHEREAS**, the Department of the Sheriff request to utilize the Communications
13 System Agreement under the Motorola – Jefferson County P25 Radio System with
14 Motorola Solutions, Inc., Motorola Contract 10-23172/CR with Jefferson County 9-1-1
15 Dispatch; and

16 **WHEREAS**, the Department of the Sheriff request to purchase dual band radios
17 and other equipment that is available from Jefferson County 9-1-1 Dispatch and the
18 Communications System Agreement under the Motorola – Jefferson County P25 Radio
19 System with Motorola Solutions, Inc., Motorola Contract 10-23172/CR; and

FILED

1 **WHEREAS**, after reviewing the Communications System Agreement under the
2 Motorola – Jefferson County P25 Radio System with Motorola Solutions, Inc., Motorola
3 Contract 10-23172/CR with Jefferson County 9-1-1 Dispatch set forth above, the County
4 has determined that certain bids and proposals represent the lowest and best bid for the
5 respective items or services and met the bid or proposal specifications issued by the
6 Motorola – Jefferson County P25 Radio System with Motorola Solutions, Inc.; and

7 **WHEREAS**, the Jefferson County, Missouri, Council finds it is in the best interests
8 of the County to utilize the Communications System Agreement under the Motorola –
9 Jefferson County P25 Radio System with Motorola Solutions, Inc., Motorola Contract 10-
10 23172/CR with Jefferson County 9-1-1 Dispatch for the purchase of dual band radios and
11 other equipment for a term from 09-12-16 to 09-11-17 upon approval by the County
12 Council and County Executive for the total amount up to \$60,000.00 for the purchase of
13 the dual band radios and other equipment, subject to budgetary limitations.

14 **NOW, THEREFORE, BE IT ENACTED BY THE JEFFERSON COUNTY,**
15 **MISSOURI, COUNCIL, AS FOLLOWS:**

16 Section 1. The County awards the following bids and proposals which are
17 incorporated by this reference as if fully set out herein, to all the vendors bidding for each
18 respective item or service as follows:

19 BID NAME

20 Jefferson County P25 Radio System

21 TERM

22 09-12-16 to 09-11-17

1

AMOUNT

2

For the amount up to \$60,000.00 for the dual band radios and other equipment
subject to budgetary limitations

4

AWARDED BIDDER

5

Jefferson County 9-1-1 Dispatch Contract with

6

Motorola Solutions, Inc., Motorola Contract 10-23172/CR

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Section 2. The Jefferson County, Missouri, Council hereby authorizes the County Executive to execute any agreements or contracts necessary to effectuate the award of the bid awards set forth in this Ordinance. The County Executive is further authorized to take any and all actions necessary to carry out the intent of this Ordinance.

11

Section 3. Copies of all Invitations for Bid, Requests for Proposals, responses thereto, and any contracts or agreements shall be maintained by the office of the County Clerk consistent with the rules and procedures for the maintenance and retention of records as promulgated by the Secretary of State.

15

Section 4. This Ordinance shall be in full force and effect from and after its date of approval. If any part of this Ordinance is invalid for any reason, such invalidity shall not affect the remainder of this Ordinance.

THIS BILL BEING DULY INTRODUCED, THE MEMBERS OF THE JEFFERSON COUNTY, MISSOURI, COUNCIL VOTED AS FOLLOWS:

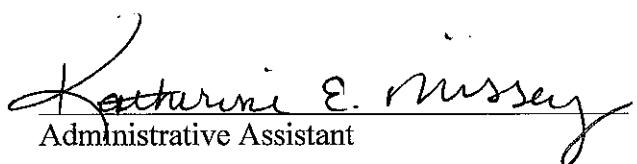
Council Member District 1, Don Bickowski	<u>Yes</u>
Council Member District 2, Renee Reuter	<u>Yes</u>
Council Member District 3, Robert Boyer	<u>Yes</u>
Council Member District 4, George Engelbach	<u>Absent</u>
Council Member District 5, Oscar J. (Jim) Kasten	<u>Absent</u>
Council Member District 6, Cliff Lane	<u>Yes</u>
Council Member District 7, Jim Terry	<u>Yes</u>

THE ABOVE BILL ON THIS 12th DAY OF September, 2016:

✓ PASSED FAILED



Renee Reuter, County Council Chair



Katherine E. Missey
Administrative Assistant

THIS BILL WAS APPROVED BY THE JEFFERSON COUNTY EXECUTIVE AND ENACTED AS AN ORDINANCE OF JEFFERSON COUNTY, MISSOURI, THIS 13th DAY OF September, 2016.

THIS BILL WAS _____ VETOED AND RETURNED TO THE JEFFERSON COUNTY, MISSOURI, COUNCIL WITH WRITTEN OBJECTIONS BY THE JEFFERSON COUNTY EXECUTIVE, THIS _____ DAY OF _____, 2016.

Kenneth B. Waller

Kenneth B. Waller, Jefferson County, Missouri, Executive

ATTEST:

Wes Wagner
Wes Wagner, County Clerk

BY: Katherine E. Missey

Reading Date: 09-12-2016

Communications System Agreement

Motorola Solutions, Inc. ("Motorola") and Jefferson County 911 Dispatch ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

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

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Payment Schedule"
Exhibit C	"Technical and Implementation Documents"
C-1	"System Description" dated September 28, 2011
C-2	"Statement of Work" dated September 28, 2011
C-3	Maintenance Service Statement(s) of Work dated September 28, 2011
C-4	"Assumptions to Requirements" Document dated September 28, 2011
C-5	Project Schedule date September 28, 2011
C-6	Motorola Price Form Date September 28, 2011
C-7	Clarification Questions and Pricing Form dated April 12, 2011
C-8	Clarification Questions and Pricing Form dated April 20, 2011
Exhibit D	Motorola's proposal dated March 23, 2011 as amended September 28, 2011
Exhibit E	"System Acceptance Certificate"
Exhibit F	Jefferson County Request for Proposal dated February 1, 2010

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.
- 2.2. "Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 2.3. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.4. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- 2.5. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.6. "Effective Date" means that date upon which the last Party executes this Agreement.

2.7. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

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

2.9. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.

2.10. "Motorola Software" means Software that Motorola or its affiliated company owns.

2.11. "Non-Motorola Software" means Software that another party owns.

2.12. "Open Source Software" (also called "freeware" or "shareware") means software with either freely obtainable source code, license for modification, or permission for free distribution.

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

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

2.15. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.

2.16. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

2.17. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

2.18. "System Acceptance" means the Acceptance Tests have been successfully completed in accordance with the Acceptance Test Plan, a written document which shall be mutually agreed upon by the Parties as part of the project design phase.

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

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested oral changes unless both Parties execute a written change order.

3.3. TERM. Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. For the term of the contract, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. MAINTENANCE SERVICE. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit C-3. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Lessor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. SUBSTITUTIONS. At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. OPTIONAL EQUIPMENT OR SOFTWARE. This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for the contract term), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving

written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is Thirty One Million, Four Hundred Nineteen Thousand Five Hundred Seventeen (\$31,419,517.00). If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

5.2. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within twenty (20) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

5.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address _____ 5475 Buckeye Valley Rd. House Springs Mo. 63051

The address which is the ultimate destination where the Equipment will be delivered to Customer is: _____ 5475 Buckeye Valley Rd. House Springs Mo. 63051

The Equipment will be shipped to the Customer at the following address (insert if this information is known): _____

Customer may change this information by giving written notice to Motorola.

5.5 LIQUIDATED DAMAGES.

Motorola understands and agrees that if Contractor fails to complete the Work in accordance with the Agreement, the County may suffer substantial losses and damages. Motorola agrees that it shall be liable for all such losses and damages, subject to the limits set forth in the Agreement. The Parties acknowledge and agree that because of the unique nature of the project, the Performance Schedule is

critical. Motorola acknowledges and agrees that payment of the Liquidated Damages set forth below is intended to compensate the County solely for Motorola's failure to meet the specified requirements listed in the Agreement. The County agrees that Motorola's payment of Liquidated Damages in connection with such failure to meet contract requirements shall be County's sole remedy with regard to the losses and damages related to such failure. However, payment of Liquidated Damages for such losses and damages shall not excuse Motorola from liability for other losses and damages not related to the failure to meet requirements for which Liquidated Damages shall have been paid.

Unless failure to achieve the identified milestones is due to no fault of Motorola, if Motorola fails to achieve the following milestones, Motorola agrees to pay the County Liquidated Damages in the following amounts. However, Motorola's obligation for payment of Liquidated Damages shall be capped at an aggregate amount equal to one percent (1%) of the Fixed Network Equipment portion of the total Contract Price.

- A) Unless agreed to otherwise by the Parties in writing, any delay solely attributable to Motorola in achieving the System cutover by the date set forth for such milestone in the Project Schedule shall result in Motorola being liable to the County for Liquidated Damages calculated as follows:
 - Weekly rate of 0.05% of the Fixed Network Equipment portion of the total Contract Price prorated on a seven (7) day calendar week.
 - The Parties agree that Motorola's total obligation for payment under this Liquidated Damages trigger shall not exceed Fifty Thousand Dollars (\$50,000).
- B) Unless agreed to otherwise by the Parties in writing, any delay solely attributable to Motorola in achieving Final Acceptance by the date set forth for such milestone in the Project Schedule shall result in Motorola being liable to the County for Liquidated Damages calculated as follows:
 - Weekly rate of 0.02% of the Contract Price prorated on a seven (7) day calendar week.
- C) Upon a claim by County for Liquidated Damages under Subsection A above, the Parties shall amend the Project Schedule to adjust the schedule with respect to Final Acceptance based on the term of the delay for which Liquidated Damages are claimed under Subsection A. County shall not be entitled to make a claim for Liquidated Damages under Subsection B if such claim is based on a delay for which Liquidated Damages were paid or payable by Motorola under Subsection A.

5.6 BONDS. County hereby waives the bond requirement set forth in County's Request for Proposal – Exhibit F, Section 5.3.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola will assist Customer in the local building permit process.

6.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation,

use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 8 SYSTEM ACCEPTANCE

8.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. BENEFICIAL USE. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance. If, during implementation or testing, a disaster is declared within the County by an authorized County representative or by a state or federal agency, and the System is in usable condition, County may request that Motorola authorize single-event use of the System. Authorization shall not be unreasonably withheld. Such single-event use shall be upon terms agreeable to County and Motorola, shall terminate upon the expiration of the immediate need for use of the System (but no later than thirty (30) days after the single-event use begins), and shall not act as System Acceptance. Testing and Training shall not constitute Beneficial Use.

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

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's sole control, this warranty expires eighteen (18) months after the shipment of the Equipment, unless otherwise agreed to by the parties.

9.3. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within Customer's sole control, this warranty expires eighteen (18) months after the shipment of the Motorola Software, unless otherwise agreed to by the parties. **TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.**

9.4. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System, and any agencies identified in the RFP in Exhibit F as authorized purchasers and end users for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS

ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DELAYS

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

10.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (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 Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola 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.

Section 11 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

11.1. **GOVERNING LAW.** The contract will be governed by and construed in accordance with the laws of the State of Missouri, including but not limited to the Missouri Open Records Law.

11.2. In cases of disputes as to whether or not an item or service quoted or delivered met the specifications, The parties will attempt to resolve the dispute promptly through good faith negotiations including: 1) timely escalation of the dispute to executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for the matter; and 2) direct communication between the executives. The Board may request and evaluate a recommendation in writing from Motorola and the Board's Project manager or other objective sources. If a dispute remains unresolved for sixty (60) days after a notice of dispute is issued in writing by one Party to the other, either Party may then submit the dispute to a court of competent jurisdiction in the state in which the system is installed. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with the contract.

Section 12 DEFAULT AND TERMINATION

12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to

a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

Section 13 INDEMNIFICATION

13.1. GENERAL INDEMNITY BY MOTOROLA. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any the claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

13.2. GENERAL INDEMNITY BY CUSTOMER. Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

13.3. PATENT AND COPYRIGHT INFRINGEMENT.

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

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

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

13.3.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola 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. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

Section 14 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. 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.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

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

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

Section 16 GENERAL

16.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola

is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola 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"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, or a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.
Attn: Commercial Counsel
1301 E. Algonquin Rd., SH5
Schaumburg, IL 60196
fax: 847-576-0721

Customer
Attn: Travis Williams
5475 Buckeye Valley Rd
House Springs, Mo 63051
fax: 636-942-3605

16.9. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

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

16.11. ADMINISTRATOR LEVEL ACCOUNT ACCESS. Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under the Agreement or its Maintenance and Support Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

16.12. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

By: Scott Schoepel
Name: Scott Schoepel
Title: MSSI Vice President
Date: 9/28/11

Customer

By: Ed Kemp
Name: Ed Kemp
Title: Chairman of 911
Date: 9-29-11