



August 23, 2005

Allen Huggins  
Lieutenant, Costa Mesa Police Department  
City of Costa Mesa, CA 92626

RE: Motorola Mobile Workstation, MW800 Proposal

Dear Lt. Huggins,

Motorola Inc., by and through its Government and Enterprise Mobility Solutions ("Motorola"), is pleased to have the opportunity to provide the City of Costa Mesa with quality communications equipment and services. The Motorola project team has taken great care to propose a solution that will meet your needs and provide unsurpassed value.

To best meet the functional and operational specifications of this solicitation, Motorola's solution includes a combination of hardware, software, and services. Specifically, this solution provides:

- Mobile Workstation, MW800 for Police and Fire
- All Required Mounting Hardware
- Installation Services

This proposal consists of this cover letter and the COMMUNICATIONS PRODUCTS AGREEMENT (CPA) together with its Exhibits. This proposal shall remain valid for a period of 60 days from the date of this cover letter. The City of Costa Mesa may accept the proposal by delivering to Motorola the "CPA" signed by the City. Alternatively, Motorola would be pleased to address any concerns the City may have regarding the proposal. Any questions can be directed to your Motorola Account Manager, Mr. Maril Beck, 951/677-4919.

We thank you for the opportunity to furnish the City of Costa Mesa with "best in class" solutions and we hope to strengthen our relationship by implementing this project. Our goal is to provide you with the best products and services available in the communications industry.

Sincerely,  
MOTOROLA, INC.

By:   
Kelly B. Clayton, Area Controller

cc: Maril Beck, Account Manager  
David Little, Contracts and Compliance Manager

## Communications Products Agreement

Motorola, Inc. ("Motorola"), and the City of Costa Mesa ("Customer") enter into this "Agreement" in the City of Costa Mesa to be performed in the City of Costa Mesa, pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Seller 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 the exhibits will be resolved in their listed order.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"List of Products" dated August 25, 2005
Exhibit C	"Statement of Work" dated August 23, 2005
Exhibit D	Payment Schedule
Exhibit E	Optional Lease Options

### Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

2.1. "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.

2.2. "Contract Price" means the price for the Products, excluding applicable sales or similar taxes and freight charges.

2.3. "Effective Date" means that date upon which the last Party executes this Agreement.

2.4. "Equipment" means the equipment listed in the List of Products that Customer purchases from Motorola under this Agreement.

2.5. "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).

2.6. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software infringes upon the third party's United States patent or copyright.

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

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

2.9. "Open Source Software" (also called "freeware" or "shareware") means software that has its underlying source code freely available to evaluate, copy, and modify.

2.10. "Products" mean the Equipment and Software provided by Motorola under this Agreement.

2.11. "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.

2.12. "Software" means the Motorola Software and Non-Motorola Software in object code format that is furnished with the Products.

2.13. "Warranty Period" means one (1) year from the date of successful installation of each Product. If installation is delayed beyond six (6) months after shipment of a specific Product by events or causes within Customer's control, then the warranty will expire on the specific Product eighteen (18) months after it was shipped.

### **Section 3 SCOPE OF AGREEMENT AND TERM**

3.1. SCOPE OF WORK. Motorola will provide and install (if applicable) the Products, 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. Neither Party is obligated to perform requested 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 expiration of the Warranty Period or three (3) years from the Effective Date, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. During the Term of this Agreement, 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, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Payment is due within thirty (30) days after the invoice date, and 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. This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

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 Licensor'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. **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 one (1) year after the Effective Date), 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**

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

#### **Section 5      CONTRACT PRICE, PAYMENT, AND INVOICING**

5.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is **\$761,299.00**.

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 rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola, 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 and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. 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: **77 Fair Drive, Costa Mesa, CA 92626-6520**

The city which is the ultimate destination where the Equipment will be delivered to Customer is:  
**Costa Mesa**

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.

## **Section 6 SITES AND SITE CONDITIONS**

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will reasonably provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry and OSHA standards, except that this requirement shall not excuse Motorola's obligation to reasonably insure the same or to notify Customer of any work site conditions which it may find are not 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; electrical power outlets, distribution and equipment and telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the Products.

## **Section 7 ACCEPTANCE**

Acceptance of the Products will occur upon successful completion of the installation of the Products.

## **Section 8 REPRESENTATIONS AND WARRANTIES**

8.1. 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.

8.2. 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 that are applicable to the Motorola Software.

8.3. 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.

8.4. 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.

8.5. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.6. 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 9 DELAYS**

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.

## **Section 10 DISPUTES**

10.1. SETTLEMENT PREFERRED. The Parties will attempt to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through consultation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the Parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by the Parties within thirty days after notice by one of the Parties demanding non-binding mediation. The Parties will not unreasonably withhold their consents to the selection of a mediator, will share the cost of the mediation equally, may postpone mediation until they have completed some specified but limited discovery about the dispute, and may also replace mediation with some other form of non-binding alternative dispute resolution ("ADR").

10.2. LITIGATION. A Party may submit to a court of competent jurisdiction in the state in which the Products are delivered any claim relating to intellectual property or a breach of confidentiality provisions and any dispute that cannot be resolved between the Parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation. Each Party consents to jurisdiction over it by that court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either Party.

## **Section 11 DEFAULT AND TERMINATION**

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 the 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. If the non-performing Party fails to cure the default, the performing Party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement.

## **Section 12 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION**

12.1. Motorola will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an 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.

12.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for the Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Motorola Software.

12.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; any Equipment that is not Motorola's design or formula; a modification of the Motorola Software by a party other than Motorola; or the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment, Motorola Software, or any of their parts.

### **Section 13      LIMITATION OF LIABILITY**

Except for personal injury or death or direct damage to tangible property, 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 total Contract Price. **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.

### **Section 14      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

#### **14.1.      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 such 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.

#### 14.2. 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, 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 15 GENERAL**

15.1. TAXES. The Contract Price does not include 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 any non-exempt 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.

15.2. ASSIGNABILITY AND SUBCONTRACTING. Neither Party may assign this Agreement without the prior written consent of the other Party, except that Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

15.3 WAIVER. Failure or delay by either Party to exercise any 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.

15.4. 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.

15.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement only 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.

15.6. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. 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.

15.7. GOVERNING LAW. This Agreement and the rights and duties of the Parties will be governed by and interpreted in accordance with the laws of the State in which the Products are delivered.

15.8. 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 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.

15.9. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either delivered personally 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, Inc.  
Attn: Contracts and Compliance  
6450 Sequence Drive  
San Diego, CA 92121  
fax: 858 404-2594

Customer  
Attn: Lt. Allen Huggins  
99 Fair Drive  
Costa Mesa, CA 92626-6520  
fax: 714-754-5002

15.10. 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.

15.11. 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.

15.12. 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 10 (Disputes); Section 13 (Limitation of Liability); Section 14 (Confidentiality and Proprietary Rights); and all of the General terms in this Section 15.

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

**Motorola, Inc.**

**Customer**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit A

### Software License Agreement

In this Exhibit A, the term "Licensor" means Motorola, Inc., ("Motorola") or Printrak International, Incorporated, a Motorola company ("Printrak"); "Licensee," means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached; and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The Parties agree as follows:

#### Section 1 SCOPE

Licensor will provide to Licensee proprietary software or radio communications, computer, or other electronic products ("Products") containing embedded or pre-loaded proprietary software, or both. "Software" means the proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of the software, and may contain one or more items of software owned by a third party supplier ("Third Party Software"). Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." This Agreement contains the terms and conditions pursuant to which Licensor will license to Licensee, and Licensee may use, the Software and Documentation.

#### Section 2 GRANT OF LICENSE

Subject to Section 1, Licensor hereby grants to Licensee a personal, non-transferable (except as permitted in Section 8 below), limited, and non-exclusive license under Licensor's applicable proprietary rights to use the Software and related Documentation for the purposes for which they were designed and in accordance with the terms and conditions of this Agreement. The license does not grant any rights to source code.

If the Software is or includes Integration Framework, Customer Service Request ("CSR"), or Cityworks software, that Software is licensed pursuant to this Agreement plus a separate document entitled "Software License Agreement Rider for Integration Framework, Customer Service Request, or Cityworks Software" (which document is incorporated by this reference and is either attached to this Agreement or will be provided upon Licensee's request).

#### Section 3 LIMITATIONS ON USE

3.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Licensee may not for any reason modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code, create derivative works from, adapt, translate, merge with other software, copy, reproduce, distribute, or export any Software or permit or encourage any third party to do so, except that Licensee may make one copy of Software provided by Licensor to be used solely for archival, back-up, or disaster recovery purposes. Licensee must reproduce all copyright and trademark notices on all copies of the Software and Documentation.

3.2. Licensee may not copy onto or transfer Software installed in one Product device onto another device. Notwithstanding the preceding sentence, Licensee may transfer Software installed on one device to another device when the original device is inoperable or malfunctioning, for replacement purposes only, or may temporarily transfer Software installed on one device onto another if the original device is inoperable or malfunctioning, if Licensee provides written notice to Licensor of the temporary transfer and the temporary transfer is discontinued when the original device is returned to operation. Upon Licensor's written request, Licensee must provide to Licensor a written list of all Product devices in which the Software is installed and being used by Licensee.

3.3. Concerning Motorola's Radio Service Software ("RSS"), if applicable, Licensee must purchase a copy for each location at which Licensee uses RSS. Licensee's use of RSS at an authorized location does not entitle Licensee to use or access the RSS remotely. Licensee may make one additional copy for each computer owned or controlled by Licensee at each authorized location. Upon Licensor's written request, Licensee must provide to Licensor a written list of all locations where Licensee uses or intends to use RSS.

#### Section 4 OWNERSHIP AND TITLE

Title to all copies of Software will not pass to Licensee at any time and remains vested exclusively in the copyright owner. The copyright owner owns and retains all of its proprietary rights in any form concerning the Software and Documentation, including all

rights in patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, and other intellectual properties (including any corrections, bug fixes, enhancements, updates, or modifications to or derivative works from the Software whether made by Licensor or another party, or any improvements that result from Licensor's processes or, if applicable, providing information services). Nothing in this Agreement is intended to restrict the proprietary rights of Licensor or to grant by implication or estoppel any proprietary rights. All ownership and title to intellectual property developed, originated, or prepared by Licensor in connection with providing to Licensee Software, Products, Documentation, or related services remain vested exclusively in Licensor, and this Agreement does not grant to Licensee any shared development rights of intellectual property.

## **Section 5 CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Licensor's valuable proprietary and Confidential Information and are Licensor's trade secrets, and that the provisions in the Agreement concerning Confidential Information apply.

## **Section 6 LIMITED WARRANTY**

6.1. The commencement date and the term of the Software warranty will be as stated in the Primary Agreement, or if the initial Warranty Period has expired, the remainder (if any) of the term of the applicable Software Maintenance and Support Agreement.

6.2. During the applicable Warranty Period, Licensor warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined solely with reference to the Documentation. Licensor does not warrant that Licensee's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Licensee's particular requirements. Warranty claims are described in the Primary Agreement.

6.3. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE TRANSACTION COVERED BY THIS AGREEMENT IS A LICENSE AND NOT A SALE OF GOODS.

## **Section 7 LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 8 TRANSFERS**

Licensee will not transfer Software or the related Documentation to any third party without Licensor's prior written consent, which consent may be withheld in Licensor's reasonable discretion and which may be conditioned upon the transferee paying all applicable license fees and agreeing to be bound by this Agreement. Notwithstanding the preceding sentence, if Licensee transfers ownership of radio Products to a third party, Licensee may assign its rights to use the Software (other than Radio Service Software and Motorola's FLASHport® Software) embedded in or furnished for use with those radio Products; if Licensee transfers all copies of the Software and the related Documentation to the transferee, and the transferee executes a transfer form to be provided by Licensor upon request (which form obligates the transferee to be bound by this Agreement).

## **Section 9 TERM AND TERMINATION**

Licensee's right to use the Software and Documentation will begin when this Agreement is mutually executed by both parties and will continue during the life of the Products in which the Software is used, unless Licensee breaches this Agreement in which case it will be terminated immediately upon notice by Licensor. Licensee acknowledges that Licensor has made a considerable investment of resources in the development, marketing, and distribution of its proprietary Software and Documentation and that reasonable and appropriate limitations on Licensee's use of the Software and Documentation are necessary for Licensor to protect its investment, trade secrets, and valuable intellectual property rights concerning the Software and Documentation. Licensee also acknowledges that its breach of this Agreement with respect to Software will result in irreparable harm to Licensor for which monetary damages would be inadequate. In the event of a breach of this Agreement and in addition to termination of this Agreement, Licensor will be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government). Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Licensor that all copies of the Software and Documentation have been returned to Licensor or destroyed and are no longer in use by Licensee.

## **Section 10 NOTICES**

Notices are described in the Primary Agreement.

## **Section 11 UNITED STATES GOVERNMENT LICENSING PROVISIONS**

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## **Section 12 GENERAL**

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

12.2. **COMPLIANCE WITH LAWS.** Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Licensor and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government, or any of its agencies, at the time of the action, requires an export license or other governmental approval. Violation of this provision will be a material breach of this Agreement, permitting immediate termination by Licensor.

12.3. **ASSIGNMENTS.** Licensor may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Software, without prior notice to or consent of Licensee.

12.4. **GOVERNING LAW.** This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Software or Products are shipped.

**Exhibit B**  
**List of Products**

**Exhibit C**  
**Statement of Work**

**EXHIBIT D**  
**PAYMENT SCHEDULE**

Except for the first payment, which is due when Customer signs this Agreement, Customer agrees to make payments to Motorola within 30 days after the date of invoices that will be submitted by Motorola according to the following payment schedule:

1. 30% of the total contract price is due when Customer signs this Agreement;
2. 60% of the total contract price will be invoiced immediately after the Equipment is shipped from Motorola's facilities;
3. 10% of the total contract price will be invoiced immediately after Installation.

**EXHIBIT E**  
**Optional Lease Options**



# CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

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FROM THE OFFICE OF THE CITY CLERK

**IF YOU ARE INTERESTED IN VIEWING THE REMAINDER  
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