

CONTRACT
No. 200823

THIS CONTRACT, made and entered into in triplicate originals this 14th day of November, 2012, by and between the **City of Winchester, Virginia**, Party of the First Part, hereinafter referred to as the "Owner" and **Motorola Solutions, Inc. ("Motorola")**, Party of the Second Part, hereinafter referred to as the "Contractor".

WITNESSETH, That the Contractor and the City for the consideration stated herein agree as follows:

ARTICLE I, SCOPE OF WORK - The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, expendable equipment and all utility and transportation services required to perform and complete in a workmanlike manner all the work required in connection with:

RFP No. 200823 - Public Safety Radio Network

all in strict accordance with the Contract Documents prepared by the Owner and Engineer. The Contractor shall do everything required by this Contract and other Documents constituting a part thereof.

ARTICLE II, CONTRACT PRICE - The City shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds, the Contract Price computed as follows:

TOTAL CONTRACT PRICE= \$3,200,000.00

ARTICLE III. PAYMENTS - Payments are to be made to the Contractor in accordance with and subject to provisions embodied in the Documents made a part of this Contract.

ARTICLE IV. CONTRACT TIME - Work under this Contract shall commence no later than the date to begin work set forth in a written Notice to Proceed from the City or its authorized representative, to the Contractor. The Contractor shall complete all work under this Contract **prior to February 9, 2014** following the date specified in the Notice to Proceed.

The Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the City that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE V. ENGINEER – The project has been designed by L. R. Kimball, who is hereinafter called ENGINEER and who is to act in conjunction with the OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE VI. HOLD HARMLESS CLAUSE - Bids shall provide that during the term of the Contract, including warranty period, for the successful bidder indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the Contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The Contractor agrees that this clause shall include claims involving infringement of patent or copyrights.

ARTICLE VII. LIQUIDATED DAMAGES - It is hereby fully understood and agreed that the time is of essence in the performance of this Contract. For each and every calendar day that elapses between the Contract Completion Date and the date on which the work covered by such Contract is actually completed, including the removal of all plant and obstructions from the site of such work, the Contractor shall pay to the City as liquidated damages and not as a penalty, the sum of TWO THOUSAND FIVE HUNDRED DOLLARS PER CALENDAR DAY (\$2,500.00). The total amount so payable by the Contractor as liquidated damages either may be deducted from any moneys due or payable to the Contractor by the City or so much thereof as is not so deducted shall be chargeable to and will be payable promptly by such Contractor and his Surety, or either of them, to the City. Such liquidated damages shall be payable to reimburse or compensate, at least in part, the City for (1) the administration of the work covered by such Contract and any other contract or contracts beyond the Contract Completion Date, including the additional expense to the City for supervision, inspection, and superintendence; (2) expenditures resulting from the inability of the City (and the general public) to use the improvement being constructed from and after such Contract Completion Date until the actual date of completion; (3) other miscellaneous obligations and expenditures incurred by the City directly as a result of the failure to complete the Work covered by such Contract on or before the Contract Completion Date. The City shall also pay incentives to the Contractor in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS PER CALENDAR DAY (\$2,500.00) if the work is completed before the completion date. The maximum incentive for this entire project shall be \$75,000.

ARTICLE VIII. COMPONENT PARTS OF THIS CONTRACT - That this Contract consists of the following component parts which are made a part of this agreement and Contract as fully and absolutely as if they were set out in detail in this Contract; the

following document, including this document and the negotiation summary shall be referred to collectively as the "Contract Documents":

SECTION 1 – Proposal Documents

- Request for Proposal
- Instructions to Respondents
- Proposal Form
- Contractor Qualification Data Sheet
- Bid Bond
- Non-Collusion Affidavit
- Contract
- Performance Bond
- Labor and Material Payment Bond
- Notice of Award
- Notice to Proceed
- City of Winchester Required General Terms and Conditions
- General Conditions
- Supplement to General Conditions
- Special Terms and Conditions

SECTION 2 – General Scope of Work

- a. Project Overview
- b. Radio Network
- c. Digital Microwave
- d. Self-Supporting Tower
- e. Pre-Fabricated Equipment Shelter
- f. Chain Link Fencing and Gates
- g. Propane Generator and Transfer Switch

SECTION 3 – Option A – Full 800 MHz Trunking Radio Network

- a. Option A – Radio Network
- b. Option A – Radio Dispatch Console System
- c. Option A – Non-Fixed User Radio Equipment

SECTION 4 – Option B – 800 MHz / VHF Hybrid System

- a. Option B – Radio Network
- b. Option B – Radio Dispatch Console System
- c. Option B – Non-Fixed User Radio Equipment

SECTION 5 – Option C – VHF Compliance System

- a. Option B – Radio Network
- b. Option B – Non-Fixed User Radio Equipment

APPENDICES

- A. Detailed Pricing Submittal Forms
- B. FCC License Information

- C. Candidate Radio Sites
- D. Glossary

CONTRACTOR'S RFP RESPONSE, dated February 29, 2012

TECHNICAL AND IMPLEMENTATION DOCUMENTS:

- A. "Issues Document", as amended;
- B. "System Description", as amended;
- C. "Equipment List", as amended;
- D. "Statement of Work", as amended;
- E. "Performance Schedule", as amended;
- F. "Training Description", as amended;
- G. "Acceptance Test Plans";
- H. "System Acceptance Certificate".

All of the following Addenda:

- Addendum No. 1, dated January 12, 2012
- Addendum No. 2, dated January 25, 2012

Above components are complimentary and what is called for by one shall be binding as if called by all.

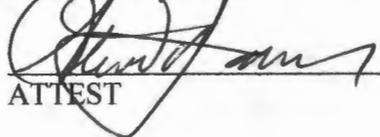
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date first written above.

MOTOROLA SOLUTIONS, INC.:



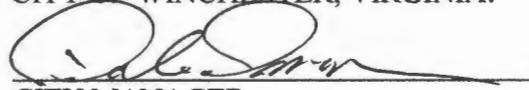
Jacquelyn M. Wasni, MSSSI Vice President

NAME AND TITLE

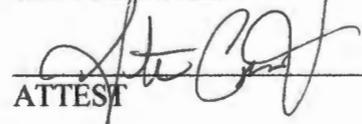


ATTEST

CITY OF WINCHESTER, VIRGINIA:



CITY MANAGER



ATTEST

APPROVED AS TO FORM:





CITY ATTORNEY

NEGOTIATION SUMMARY
City of Winchester, VA – Public Safety Radio Network RFP # 200823

WHEREAS, Motorola Solutions, Inc. (“Motorola”) and the City of Winchester, VA (“Customer”) enter into the Contract to which these terms are attached (“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.” In interpreting this Agreement and resolving any ambiguities, this Negotiation Summary shall take precedence over all Contract Documents. For good and valuable consideration, the Parties agree as follows:

Section 1 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 1.1. “Beneficial Use” means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 1.2. “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.
- 1.3. “Contract Documents” means the Contract to which this is attached and any other documents as outlined in Article VIII of the Contract.
- 1.4. “Contract Price” means the price for the System, including applicable sales or similar taxes and freight charges.
- 1.5. “Effective Date” means that date upon which the last Party executes this Agreement.
- 1.6. “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.
- 1.7. “Force Majeure” means an event, circumstance, or act of a third party that is beyond a Party’s reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).
- 1.8. “Motorola Software” means Software that Motorola or its affiliated company owns.
- 1.9. “Non-Motorola Software” means Software that another party owns.
- 1.10. “Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.11. “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.

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

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

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

1.15. "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.

1.16. "System Acceptance" means when all deliverables and other work have been completed as described in the RFP.

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

Section 2 SCOPE OF AGREEMENT AND TERM

2.1. SCOPE OF WORK. Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with the Contract Documents. Customer will perform its contractual responsibilities in accordance with the Contract Documents.

2.2. TERM. Unless terminated in accordance with other provisions of the Contract Documents 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.

2.3. 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 changes unless both Parties execute a written change order. Motorola agrees to make any claim for an adjustment in price under this provision within ninety (90) days from the date of the executed change order.

2.4. 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.

2.5. 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).

2.6. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if in the opinion of Motorola and with the concurrence of Customer 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.

2.7. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For two (2) years after Final System Acceptance, Customer may order additional Equipment or Software, if it is then available, at the prices shown in the Pricing Matrix of Motorola's Proposal. Each order must refer to this Agreement and must specify the delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for 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 as described in Section 4.3 of this Negotiation Summary, warranty will commence upon delivery, and payment is due within thirty (30) days after confirmation per Section 4.3. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed.

Section 3 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 4 CONTRACT PRICE, PAYMENT AND INVOICING

4.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$3,200,000.00. 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.

4.2. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment Schedule, either upon completion of the work, or if no work is required upon occurrence of a given milestone. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

4.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title to Software will not pass to Customer at any time. Title and Risk of loss to the Equipment will pass to Customer upon inventory and confirmation of receipt of the Equipment by the Customer or its agent at the shipment address. Within three (3) business days of receipt, customer shall send its confirmation of receipt or objections to the shipment to Motorola. If customer fails to send a confirmation of receipt or objection to the shipment to Motorola within (3) business days of receipt, the receipt of the shipment shall be deemed confirmed. Motorola will pack and ship all Equipment in accordance with good commercial practices.

4.4 **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address: Attn: Lynn Miller, Emergency Management Coordinator
CITY OF WINCHESTER, VIRGINIA
City Hall Building
15 N. Cameron Street, Winchester, VA 22601

The address which is the ultimate destination where the Equipment will be delivered to Customer is:
Attn: Lynn Miller, Emergency Management Coordinator
CITY OF WINCHESTER, VIRGINIA
Timbrook Public Safety Building 231 East Piccadilly Street
Winchester, VA 22601

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

2248 Papermill Road
Winchester, VA 22601

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

Section 5 ACCEPTANCE AND BENEFICIAL USE

5.1. **SYSTEM ACCEPTANCE.** Final System Acceptance shall mean the date on which all deliverables and other work have been completed as described in the RFP. The Parties will memorialize this event by promptly executing a System Acceptance Certificate. Final System Acceptance will not be delayed by failure to resolve minor punch list items. Satisfactory completion of installation of subscriber equipment does not include incremental purchases.

5.2. **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 without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

Section 6 REPRESENTATIONS AND WARRANTIES

6.1. **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.

6.2. **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 control, this warranty expires eighteen (18) months after the shipment of the Equipment.

6.3. **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 control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. 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.

6.4. **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.

6.5. **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.

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

6.7. **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 7 DELAYS, TERMINATION AND LIQUIDATED DAMAGES

7.1. **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.

7.2. **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. For the purposes of this section "unreasonable delays" shall not include time necessary for administrative review and approval of public bodies required for the performance of this Agreement.

7.3. TERMINATION.

7.3.1. **Termination for Convenience.** Customer may terminate this Agreement, in whole or in part, whenever the Customer determines that such termination is in the best interest of the Customer, without showing cause, upon giving thirty (30) days written notice to Motorola. Customer shall pay Motorola for all Equipment delivered or Services performed up to the effective date of termination.

7.3.2. **Termination for Default.** 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.

If a defaulting Party fails to cure the default as provided above, 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.

7.3.3. Termination for non-appropriation of funds. In the event that funds are not appropriated for this Agreement, the Agreement shall terminate as of the last day for which funds were appropriated, provided the Customer has given reasonable written notice to Motorola of the effective date of the termination. Customer shall pay Motorola for all Equipment delivered or Services performed up to the effective date of termination.

7.4. LIQUIDATED DAMAGES. The Customer and Motorola agree that the timely delivery of the System as specified in this Agreement is the essence of this Agreement. For each and every day of delay beyond the agreed upon Final System Acceptance Date (excluding any excusable delays, Force Majeure, mutually agreed or Customer-granted project extensions, or Customer caused delays), if the System is not delivered by the time specified upon the Final System Acceptance Date, there will be deducted, not as a penalty but as liquidated damages, One Thousand Five Hundred Dollars (\$1,500) per calendar day, not to exceed a total of ten percent (10%) of the Contract Price. Motorola will receive a day-for-day extension to the Performance Schedule for each day that the Customer delays the Performance Schedule as described above, there is an excusable delay due to Force Majeure, or the Parties agree to an extension to the Performance Schedule.

This Section is applicable only to the System specified in the Agreement between Motorola and Customer and shall not apply to any other purchaser using this Agreement.

Section 8 INDEMNITY

8.1. General Indemnity. Motorola will indemnify and hold City harmless from any and all liability, expense (including but not limited to reasonable attorney's fees), judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against City 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 City gives Motorola prompt, written notice of any the claim or suit. City 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 City from liabilities that are in any way related to Motorola's performance under this Agreement.

8.2. Intellectual Property Indemnity.

8.2.1. Motorola will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that the Equipment manufactured by 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: City 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 City 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 City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

8.2.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for City 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 City a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

8.2.3. 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 City's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the 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 City 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 City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from City from sales or license of the infringing Motorola Product.

8.2.4. This Section provides City's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. City 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 are subject to and limited by the restrictions set forth in the Limitation of Liability Section.

Section 9 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 10 CONFIDENTIALITY AND PROPRIETARY RIGHTS

10.1. **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 law; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the

Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

10.2. **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 11 GENERAL

11.1. **TAXES.** The Contract Price includes all applicable taxes and fees.

11.2. **AUDIT.** The Customer shall have the right to audit directly pertinent Motorola books and records for the purpose of verifying performance under this Agreement. After Customer provides thirty (30) days' written notice, Customer may send a representative to a Motorola facility during normal business hours to conduct such limited review, or at Customer's request Motorola will provide copies of the specific documents to Customer's location for its review. Motorola books and records provided to Customer pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of Motorola. In no circumstances will Motorola be required to create or maintain documents not kept in the ordinary course of Motorola's business operations, nor will Motorola be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to Motorola.

11.3. **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.

11.4. **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.

11.5. **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.

11.6. **ASSIGNMENT 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.

11.7. **INSURANCE.** Motorola agrees to have the required coverage, as specified in the RFP, at the time of contract execution. Motorola agrees to require its subcontractors to maintain similar types and

levels of coverage during the term of the Agreement. Motorola agrees to include the City of Winchester as an additional insured via a blanket CG2010 endorsement on its Commercial General Liability Policy.

11.8. 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.

11.9. ENTIRE AGREEMENT. A facsimile copy or computer image, such as a PDF or tiff image, of 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.

11.10. 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: Christine Binotti, Commercial Counsel
1303 E. Algonquin Rd.
Schaumburg, IL 60196
fax: 847-576-0721

City of Winchester, Virginia
Attn: Anthony C. Williams, City Attorney
15 North Cameron Street
Winchester, VA 22601
fax: 540-667-2259

11.11. 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.

11.12. 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.

11.13. SURVIVAL OF TERMS. The following provisions of these Negotiation Summary will survive the expiration or termination of this Agreement for any reason: Section 2.3 (Motorola Software); Section 2.4 (Non-Motorola Software); if any payment obligations exist, Sections 4.1 and 4.2 (Contract Price and Invoicing and Payment); Subsection 6.7 (Disclaimer of Implied Warranties); Section 9 (Limitation of Liability); and Section 10 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 11.

11.14. CONTINGENCY. If it is determined by the Customer that the proposed radio tower site or design is not feasible due to circumstances beyond the control of the Customer (including but not limited to the failure of the FAA or other governmental agency to approve the design and site), Motorola shall remain obligated to provide the services contemplated under this Agreement at the cost proposed with modification being made only to accommodate the necessary revisions to the location and/or design of the radio tower. The Customer shall provide Motorola with written Notice within ten (10) days of such determination, and within twenty (20) days thereafter Motorola shall provide a written proposal for the modification of costs estimated as a result of the amendment to the design and/or site location of the Radio Tower. Upon receipt of the proposal, the Customer shall have ninety (90) days to accept or reject the written proposal. During this time, all work will be suspended. Upon acceptance, the revised

proposal shall be incorporated into this Agreement by written Addendum signed by all parties, which will include any necessary adjustments to the Performance Schedule. The Customer may reject the revised proposal within the ninety (90) day period without penalty, This shall be deemed a termination for convenience and the parties shall then have no further obligations pursuant to this Agreement. If the Customer rejects the revised proposal, the Customer shall pay all compensation earned by Contractor pursuant to this Agreement up to the date of termination. However, the Contractor shall not be reimbursed for any damages or anticipatory profits that have not been earned up to the date of termination.

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Exhibit A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and the City of Winchester, Virginia ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means 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 such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

4.1. 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. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor.

Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from System Acceptance or Beneficial Use, whichever occurs first, of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola 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 by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products

to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and 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).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

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

Section 11 LIMITATION OF LIABILITY

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

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

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

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and 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 Motorola 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 is a material breach of this Agreement.

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

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the Commonwealth of Virginia. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8. **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

PAYMENT SCHEDULE – City of Winchester

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola Solutions within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

Fixed Infrastructure Equipment and Services ("FNE") (\$1,570,690.00)

1. 5% of the FNE Price upon Contract Execution (Effective Date);
2. 5% of the FNE Price upon FAA Approval of Antenna Site and Design;
3. 5% of the FNE Price upon Submission of a complete application and all necessary documents and application fee for Conditional Use Permit (CUP);
4. 10% of the FNE Price upon Completion of Contract Design Review;
5. 5% of the FNE Price upon Completion of Factory Staging;
6. 25% of the FNE Price upon Fixed Network Equipment delivery;
7. 20% of the FNE Price upon Completion of Civil Work, billable on a per site basis;
8. 10% of the FNE Price upon Completion of the Field Installation of Fixed Network Equipment, billable on a per site basis;
9. 5% of the FNE Price upon Completion of Functional Acceptance Testing; and,
10. 10% of the FNE Price upon System Acceptance.

Subscriber Equipment ("Subscriber") (\$1,629,310.00)

1. 100% of the Subscriber Price upon shipment.

Motorola Solutions reserves the right to make partial shipments of equipment and to request payment upon shipment of such equipment, however, Customer will only be obligated to make payment upon receipt of full shipment. In addition, Motorola Solutions reserves the right to invoice for installations or civil work completed on a site-by-site basis, when applicable.