

Meeting Date: 8/12/2014

Report Type: Consent

Report ID: 2014-00527

Title: Agreement with Sacramento County to purchase Portable and Mobile Radio Equipment Utilities Operations & Maintenance

Location: Citywide

Recommendation: Pass a Resolution 1) approving the use of the Sacramento County cooperative lease-purchase agreement MA00031180 with Motorola, for the purchase of Motorola radio equipment, parts, and software; and 2) authorizing the City Manager or his designee to sign an agreement with Sacramento County for the City to purchase Motorola radio equipment, parts, and software from Sacramento County, pursuant to the terms of the cooperative lease-purchase agreement, in an amount not-to-exceed \$564,210 over a ten- year term; and 3) approving the transfer of funds in the amount of \$248,341 to the Security and Emergency Preparedness Program (Z14140100).

Contact: Michael Malone, Manager, Operations & Maintenance, (916) 808-6226; Pete Millino, Superintendent, Operations & Maintenance (916) 808-5173, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Operations & Maintenance Admin

Dept ID: 14001211

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Exhibit A Agreement between DOU and Sac County

5-Exhibit B Sac County Contract for Motorola Lease Purchase

City Attorney Review

Approved as to Form

Joe Robinson

7/30/2014 12:12:18 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 7/24/2014 4:42:56 PM

Description/Analysis

Issue Detail: The City of Sacramento participates with a number of public safety and local government partners in the Sacramento Regional Radio Communication System (SRRCS) which is managed by the County of Sacramento. SRRCS is transitioning its radio system from the currently used 4.1 Motorola SmartZone hybrid analog/digital system to a new Project 25 digital radio system by 2018. To continue to operate on the SRRCS, DOU must replace 135 of its analog radios, both portable (107) and mobile (28), and upgrade software (flash) for a number of additional radios. This report requests authorization to enter into an Agreement with the County of Sacramento to purchase this radio equipment and software using the terms of the County of Sacramento's cooperative installment-purchase agreement with Motorola Solutions, Inc.

Policy Considerations: City Council approval is required for purchases of \$100,000 or more. The recommendations in this report are in accordance with City Code Section 3.56.240 which authorizes the City Manager, where advantageous to the City, to utilize cooperative purchasing agreements of other governmental jurisdictions to purchase supplies or nonprofessional services without separate competitive bidding by the City, if approved by the City Council. Sacramento County has approved an installment-purchase contract with Motorola to furnish Motorola radio equipment, parts, and software for the SRRCS at discounted rates. The proposed Agreement with the County of Sacramento will allow the City to utilize the County's cooperative installment-purchase agreement to maximize cost savings through volume pricing, and will effectively increase staff resources by sharing contracting and purchasing efforts with Sacramento County.

Economic Impacts: None

Environmental Considerations: The Community Development Department, Environmental Planning Services Manager has reviewed the proposed project and has determined that the purchase is exempt from review under the California Environmental Quality Act (CEQA), under Section 15378 (b) (2) of the CEQA Guidelines, as the ongoing purchase of supplies is not a "project".

Sustainability: Functional radio equipment for the operations and maintenance staff supports the goals of the City's Sustainability Master Plan by enabling DOU to protect sources of water and provide flood protection.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: DOU has a need to purchase portable radio equipment to replace existing equipment which will no longer be supported. The Department recommends entering into an Agreement with the County of Sacramento to utilize the County's cooperative installment-purchase agreement #MA00031180 with Motorola Solutions, Inc. to purchase radio equipment. The County's installment-purchase agreement includes discounted pricing and incentives in excess of any discounts the City could have achieved on its own or through the use of other cooperative purchase agreements.

Financial Considerations: The purchase of equipment and software under the proposed Agreement with Sacramento County follows the terms of the County's ten-year installment-purchase agreement with a total not-to-exceed cost of \$564,209.63. The annual cost for the purchase of 135 radios and related equipment and software, including interest calculated at 3.54%, is \$56,420.96. Although this is a ten-year installment-purchase agreement, DOU anticipates paying the total cost in full by year two, as there is no pre-payment penalty.

Approval is requested for fund transfers in the amount of \$90,341 (Fund 6320) from the Wastewater Plant Regulatory Improvement Program (X14131600), \$83,000 (Fund 6006) from the Wastewater Plant Regulatory Improvement Program (X14131600), and \$75,000 (Fund 6011) from the Drainage Plant Regulatory Improvement Program (W14130800) to the Security and Emergency Preparedness Program (Z14140100). Fund transfers will provide sufficient funding for staff to make two installment payments and an early pay-off in the amount of \$387,188 in July of 2015.

Local Business Enterprise (LBE): City of Sacramento LBE program requirements are not incorporated into cooperative purchase agreements that are bid by another agency.

Background

The Department of Utilities (DOU), Operations and Maintenance Division, operates and maintains water, wastewater, and drainage facilities throughout the City of Sacramento.

DOU participates with a number of public safety and local government partners in the Sacramento Regional Radio Communication System (SRRCS) which is managed by the County of Sacramento. DOU maintains a licensing agreement with SRRCS. SRRCS will transition its radio systems from the currently used 4.1 Motorola SmartZone hybrid analog/digital system to a new Project 25 digital radio system by 2018. To continue to operate on the SRRCS, DOU must replace 135 of its analog radios; both portable (107) and mobile (28) and upgrade software (flash) for a number of additional radios. Many of these radios were already in need of replacement due to outdated technology. Additionally, the Smartzone system will no longer be supported in 2018. The Department's Security Master Plan requires that the primary dispatch of service should be with portable radios rather than cellular phones due to the greater reliability of radio frequency systems during a major incident and their capability to handle a large volume of "air traffic" as opposed to cellular communication.

The identified brand and model of the equipment is recommended by both SRRCS and City IT staff. After exhaustive analysis, the SRRCS has recommended the Motorola brand radio as the preferred device since it will maximize interoperable communications and functionality. The City's Telecommunications Engineer recommends purchase from this same line of radios due to functionality, maintenance service and overall cost.

Through the County's cooperative installment-purchase agreement, the SRRCS agencies have negotiated discounted pricing and incentives in excess of any discounts the City could have achieved on its own or through the use of other cooperative purchase agreements. Typically, radio replacement has been accomplished via cooperative agreements with either Los Angeles County or San Diego County which provided a discount of 20 percent off list pricing. However, the SRRCS (with the County of Sacramento as the lead agency) has negotiated a 40 percent discount on radios and a 31 percent discount on parts and accessories. Further, the City negotiated an additional incentive of one free software upgrade for every two radios purchased. With the additional incentive, each radio purchase includes a savings of approximately \$998 per portable radio, \$1,038 per mobile unit plus a free \$1,500 software upgrade for two radios or units purchased. This equals a purchase price savings of \$135,844.40 and free software incentive value of \$101,250 for a total savings of \$237,094.40.

Sacramento County has purchased 1,226 Project 25 replacement radios from Motorola Solutions, Inc.; 102 radios were purchased using cash and 1,124 radios were purchased on a lease to own basis. Of the radios purchased, 557 were allocated for other SRRCS agencies, including 135 radios for DOU. Purchase of the City's equipment and software will be made through an Agreement with the County of Sacramento, utilizing their cooperative installment-purchase agreement with Motorola Solutions, Inc. The purchase of equipment and software under the proposed Agreement with Sacramento County follows the terms of the County's ten-year installment-purchase agreement with a total not-to-exceed cost of \$564,209.63. The annual cost for the purchase of 135 radios and related

equipment and software, including interest calculated at 3.54%, is \$56,420.96. Although this is a ten-year installment-purchase agreement, DOU anticipates paying the lease in full by year two, as there is no pre-payment penalty.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING AGREEMENT WITH COUNTY OF SACRAMENTO TO PURCHASE MOTOROLA EQUIPMENT, PARTS, AND SOFTWARE AND AUTHORIZING TRANSFER OF FUNDS FOR THE SECURITY AND EMERGENCY PREPAREDNESS CAPITAL IMPROVEMENT PROJECT (Z14140100)

- A. The Department of Utilities (DOU) participates with a number of public safety and local government partners in the Sacramento Regional Radio Communication System (SRRCS) which is managed by the County of Sacramento.
- B. By 2018, SRRCS will transition its radio systems from the currently used 4.1 Motorola SmartZone hybrid analog/digital system to a new Project 25 digital radio system. To continue to operate on the SRRCS, DOU must replace 135 of its analog radios; both portable (107) and mobile (28) and upgrade software (flash) for a number of additional radios.
- C. Sacramento County has purchased 1,226 Project 25 replacement radios from Motorola Solutions, Inc., under a cooperative lease-purchase agreement. Of the radios purchased, 557 were allocated for other SRRCS agencies, including 135 radios for DOU.
- D. Purchase of the City's equipment and software will be made through a proposed Agreement with Sacramento County, utilizing the County's cooperative lease-purchase agreement with Motorola Solutions, Inc., which has a ten year term with an interest rate of 3.54%. The proposed Agreement with the County, including interest and tax, has a total not-to-exceed cost of \$564,209.63, with annual payments of \$56,420.96 for a ten-year term. The Department anticipates making two annual installment payments and an early pay-off of the installment purchase by July 2015.
- E. City Code Section 3.56.240 authorizes the City Manager, where advantageous to the City, to utilize cooperative purchasing agreements of other governmental jurisdictions or public agencies to purchase supplies without separate competitive bidding by the City, if approved by the City Council.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Use of Sacramento County's cooperative installment-purchase agreement MA00031180 with Motorola Solutions, Inc. is approved.
- Section 2. The City Manager or the City Manager's designee is authorized to execute an Agreement with the County of Sacramento to purchase Motorola radio

equipment, parts, and software, pursuant to the terms of the cooperative lease-purchase agreement, for an amount not-to-exceed \$564,209.63 over a ten-year installment payment term, provided that sufficient funds are available for this purpose in the budget adopted for the applicable fiscal year(s).

Section 3. The following funding transfers in the amount of \$248,341 to the Security and Emergency Preparedness Project (Z14140100) are approved: \$90,341 from Wastewater Plant Regulatory Improvement Program (X14131600, wastewater revenue bonds fund 6320), \$83,000 from Wastewater Plant Regulatory Improvement Program (X14131600, wastewater fund 6006), and \$75,000 from Drainage Plant Regulatory Improvement Program (W14130800, drainage fund 6011) to Z14140100.

Agreement for Purchase of P25 Radio Equipment

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2014, by and between the COUNTY OF SACRAMENTO (“County”), and the CITY OF SACRAMENTO, acting by and through its DEPARTMENT OF UTILITIES (“City”).

RECITALS

- A. Beginning in 1994 the Sacramento Regional Radio Communications System (SRRCS) implemented a Motorola SmartNet Trunked Radio System. The system provided radio coverage to over 1,000 square miles for Sacramento County and parts of Yolo County.
- B. Since that time upgrades and modifications to the system have taken place in an effort to maintain updated system technology as well as fulfilling the needs of the SRRCS individual member agencies.
- C. In February of 2013, SRRCS began transitioning from SRRCS’s current 4.1 Motorola SmartZone radio system to a new Project 25 (P25 or APCO-25) system. This transition should be completed by October 2019. Some of the reasons why SRRCS started transitioning to the new P25 radio system included the following:
 - Technical support became unavailable for the current system in 2013.
 - Repairs on components of the Master Site Equipment (SmartZone) will be best effort with spare parts estimated to last until 2019.
 - Other key components of the Trunked radio system will fall out of support starting in 2017.
- D. On December 11, 2012, the Sacramento County Board of Supervisors approved a resolution to sign a cooperative lease-purchase contract with Motorola Solutions to begin the phased replacement of the current 4.1 system. Following a series of negotiations, the County, on behalf of the SRRCS member agencies, agreed to purchase replacement radios from Motorola at a 40% discount off the suggested retail price. Motorola provided financing for the purchase of the replacement radios through a 10-year municipal lease-purchase agreement with the County. On December 10, 2013, the County Board of Supervisors approved the Lease Purchase Agreement with Motorola for the acquisition of 1,226 Project 25 replacement radios.
- E. The current 4.1 SRRCS system is an analog system. About 40% of the radios operating on this radio system are analog radios. These radios were purchased in 1996 and are no longer supported. Analog radios will not be able to use the digital P25 system.
- F. As a member of SRRCS, City now desires to purchase the equipment listed in Appendix B to this Agreement, which is equipment that the County obtained through its Lease-Purchase Agreement with Motorola.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the County and City (collectively “the Parties”) agree as follows:

1. EQUIPMENT PURCHASE

- a. City agrees to purchase from the County the equipment listed in Appendix B, in accordance with the payment schedule set forth in Appendix A of this Agreement. The County will continue to be responsible for making annual lease payments to Motorola when they are due under the County's separate Lease-Purchase Agreement with Motorola, and the City will have no obligations of any kind under the County's Lease-Purchase Agreement with Motorola.
- b. Starting on August 1, 2015, the County will provide an annual purchase activity report to City. This activity report will contain the amount financed, all payments made, and the remaining amount owed.

2. EQUIPMENT DELIVERY

- a. Motorola will deliver all radios and accessories directly to the County radio shop located at 3700 Branch Center Road, in Sacramento.
- b. The City will be responsible for arranging pick-up or shipment of the equipment purchased by City from the County radio shop to the City. The City will be solely responsible for any equipment loss while in transit from the County radio shop to the City.
- c. Prior to taking delivery of its equipment purchases, City and County staff will verify that the amounts (and condition) of equipment actually received conforms to the packing slips.

3. INSTALLMENT PAYMENT TERMS

- a. The term of this purchase agreement will be 10 years, with annual installment payments. The City's first payment will be due and payable within ten (10) days of the date that both Parties sign this Agreement. Subsequent payments are due on July 1, and the final payment will be due on July 1, 2023. Please see Appendix A (amortization schedule) for specific payment details.
- b. The annual interest rate for this installment purchase will be 3.54%. The Parties acknowledge that this interest rate is a reflection of the interest rate applicable to the County's Lease-Purchase Agreement with Motorola, and City is effectively assuming a portion, principal and interest included, of those payments.
- c. Based on the total amount for equipment purchased of \$468,286.27 (Appendix B), the total cost of the purchase including interest and any applicable tax is \$564,209.63. City's annual installment payment will be \$56,420.96, which includes interest and any applicable tax.
- d. With a 30-day notice, City may make a lump sum payment to pay off any outstanding balance due on this obligation without paying any penalties or early retirement fees.
- e. SRRCS will annually invoice City for its annual payment on this obligation by June 1st until the final payment is made.
- f. Annual payments will be made in accordance with the information provided on the County invoice. Failure of City to make annual payments in accordance with Appendix B will entitle, but not require, the County to terminate City's access to the SRRCS radio backbone while any payment due remains unpaid, in addition to any other remedies available at law.

4. COMPLIANCE WITH LAWS

City and the County shall observe and comply with all applicable Federal, State, County and City laws, regulations, and ordinances.

5. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

6. CONFLICT OF INTEREST

City and the County officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

7. TERMINATION

The agreement can be terminated by City by either paying any outstanding amounts owned, or after the final payment due on July 1, 2023.

8. OWNERSHIP, MAINTENANCE, AND DISPOSAL OF EQUIPMENT

So long as the City is current on its payments to County under this Agreement, City shall have full ownership and use of the equipment purchased. When all payments have been made to County under this Agreement, City will have full unconditional ownership of the equipment purchased. City will be solely responsible, from the effective date of this Agreement, for ongoing maintenance and disposal of all equipment purchased under this Agreement.

9. AMENDMENTS

No alternation, amendment, variation or waiver of terms of this Agreement shall be valid unless in made in writing and signed by all parties.

10. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY:
Rami Zakaria,
Chief Information Officer
799 G. Street
Sacramento, CA 95814-1212
Phone: 916-874-7825

TO CITY:
Lisa Deklinski
Program Specialist
Department of Utilities
1391 35th Ave.
Sacramento, CA 95822
Phone: 916-808-1309

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

11. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire contract between City and the County regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between City and the County regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

IN WITNESS HEREOF, the parties have executed this Agreement the date and year first written above.

For The County:

For The City:

By: _____
Rami Zakaria,
Chief Information Officer
Department of Technology

By: _____
David Brent
Director, Department of Utilities

REVIEWED AND APPROVED BY COUNTY COUNSEL

APPROVED AS TO FORM

By: _____ Date: _____
William C. Burke
Deputy County Counsel
County of Sacramento

By: _____ Date: _____
City Attorney

Change to Itemized Contract

Contract and Purchasing
Services Division
9660 Ecology Ln.
Sacramento, CA 95827
(916) 876-6360

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Your Vendor number with us
619885

MOTOROLA
CGISS WESTERN DIVISION
6450 SEQUENCE DR
SAN DIEGO CA 92121

Vendors Contact Person: MICHAEL MARRACCINI
Vendors Phone Number: 916 791-4857

**Reprint of
Change to MA00031180 / 12/03/2013
Itemized Contract**

This number must appear on all correspondence to the
Purchasing Division.

Contract number/date
MA00031180 / 12/03/2013

Issuing Officer/Telephone
Laino, John/916 876-6372

Signature: *John Laino*

Contract Period
Valid from: 12/20/2013
Valid to: 12/20/2014

F.O.B. Dest., Freight Prepaid
Payment Terms: Due in 30 Days
Contractual maximum value: 3,771,409.75

You are hereby notified that the goods and/or services listed have been awarded to you subject to terms and conditions referenced and to the general conditions listed on the reverse.

Before supplying any goods or services to the County, the vendor must obtain a CSO (Contract Shipping Order) number from the ordering department. A CSO is an authorized release (Purchase Order) against the contract and shall be provided in written form. "Verbal" orders are not acceptable. For a CSO to be considered valid, it must be within the scope of this contract and be consistent with its pricing, terms and conditions. The CSO number must be referenced on all documents related to the order (packing slips, invoices, etc.). Failure to obtain a CSO and reference its number may result in the delay or non-payment of the invoice.

This equipment contract documents the understanding between County of Sacramento (Lessee) and Motorola (Lessor) for the radio equipment lease-purchase between the parties.

Reference County of Sacramento Board of Supervisor Resolution 2013-0824 dated 12/10/2013

The Terms and conditions, covering the financing, are per Lease Number 23475 (electronically attached), incorporated herein by reference. The

amounts shown in the amortization schedule B in the lease document include 8% sales tax for the equipment to be lease/purchased hereunder. Lessor will remit the sales tax to the state of California when due. Motorola will document, in writing, should any future assignment occur whereby annual lease payments continue to Motorola as the lease servicer for their Assignee(s).

The contractual maximum value above represents the sum value of equipment upon delivery and tax:

Radio Equipment Portion	\$3,492,046.66
8% Sales Tax	\$ 279,363.09
Total	\$3,771,409.75

All radio equipment is provided per the following Subscriber Radio Equipment Terms and Conditions, as applicable to the long-term lease/purchase. These terms and conditions between County and Manufacturer, concerning the radio equipment, stay in force throughout the life of the lease:

Subscriber Radio Equipment Agreement
Contract Number MA00031180
between
County of Sacramento and Motorola Solutions, Inc.

The County of Sacramento ("County") on behalf of SRRCS (Sacramento Regional Radio Communications System) member agencies acquiring subscriber radio equipment hereunder and Motorola Solutions, Inc. ("Motorola") hereby enter into this Subscriber Radio Equipment Agreement (the "Agreement"), as of December 10th, 2013. The County and Motorola may be referred to individually as a "Party" or collectively as the "Parties."

The County and Motorola agree as follows:

1. All of the terms and conditions of Exhibit A, "Terms and Conditions from Existing Radio Equipment Agreement," which exhibit is attached hereto and incorporated herein by this reference, apply to this Agreement unless expressly modified herein.
2. The list describing the subscriber radio equipment and accessories being purchased under this Agreement, including the pricing for those products, is set forth in Exhibit B, "Equipment List and Pricing," which is attached hereto and incorporated herein by this reference. The accessories and the subscriber radios are priced specially for this transaction with the discount structure shown in Exhibit B. Pricing is exclusive of any applicable sales or use tax. Total amounts on the Schedule B within 23475 includes the sales tax (8% rate).
3. Exhibit B indicates that some of the products will be purchased using lease financing between the County and Motorola, and some of the

products will be purchased by the issuance of purchase orders. Payment for all purchases financed with lease financing will be paid directly to Motorola with the lease proceeds pursuant to the Municipal Lease-Purchase Agreement payment terms; payment for all purchases made by purchase orders is due from the purchaser thirty (30) days from the invoice date, and the invoice will be sent when the products are shipped. Payments will be made when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. Title to the products and risk of loss will pass to the customer upon delivery of the products. Title to Software will not pass to customer at any time but is covered by the applicable Motorola Software License Agreement. Motorola at its expense will pack and ship all products in accordance with good commercial practices.

4. In addition to Sacramento County, other regional public agencies participating in the Sacramento Regional Radio Communication System are "Eligible Purchasers" who may participate in this Agreement based on a review of their procurement requirements and those Eligible Purchasers may purchase the products shown for them on Exhibit B. Some of these Eligible Purchasers are shown on Exhibit B as being part of the purchase using the lease financing arrangement and some are shown as issuing purchase orders.

4.1. If an Eligible Purchaser is shown in Exhibit B as being part of purchase using lease financing, then (i) Motorola will accept direct payment from the lease proceeds to pay for those purchases, and (ii) the County will seek appropriate reimbursement from the applicable Eligible Purchaser. Motorola has no responsibility for the County's reimbursements from Eligible Purchasers.

4.2. However, if the purchaser (whether the County or an Eligible Purchaser) is purchasing products by issuing a purchase order and not by using the lease financing arrangement, then (i) that purchaser is responsible for making payment to Motorola, and (ii) its purchase order that it issues to Motorola will expressly refer to this Agreement by name and number. The County of Sacramento shall incur no financial responsibility in connection with purchase orders issued by another Eligible Purchaser.

5. The contact person for each party for notice purposes is:

Michael Marraccini
Motorola Solutions, Inc.
9712 Elmhurst Drive
Granite Bay, CA 95746
916-791-4857 office
916-201-5670 mobile
michael.marraccini@motorolasolutions.com

County of Sacramento

Contract and Purchasing Services Division
Attn.: John Laino
9660 Ecology Lane
Sacramento, CA 95827
916-854-9057 fax
lainoj@SacCounty.NET

6. Motorola warrants the subscriber radio equipment will be new, parts and accessories will be new or like new.

7. The effective date of this Agreement is as of December 10, 2013. The special pricing for subscriber equipment is conditioned upon all purchases being made in December 2013, and the purchasers must accept the ordered products, if functioning within published specifications, in December 2013.

8. 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 the purchaser 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 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.

9. Motorola will defend at its expense any suit brought against a purchaser under this Agreement to the extent it is based on a third-party claim alleging that the products 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: purchaser promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against purchaser by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for purchasers 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 purchasers a

credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

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 purchaser'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 purchaser 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 purchaser extend in any way to royalties payable on a per use basis or the purchaser's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from purchaser from sales or license of the infringing Motorola Product.

This Section 9 provides purchaser's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Purchaser 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.

10. Motorola and any third party manufacturer of any products own and retain all of their respective proprietary rights in the products, 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 the products remain vested exclusively in Motorola, and this Agreement does not grant to anyone any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's proprietary rights. Purchasers 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.

Motorola Solutions, Inc. Sacramento County

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Attachments:

Exhibit A Terms and Conditions from Existing Radio Equipment Agreement
Exhibit B Equipment List and Pricing

Exhibit A

Terms and Conditions from Existing Radio Equipment Agreement

This contract covers Motorola subscriber radio equipment and accessories for the radios.

All items supplied are to be new and of current manufacture, not reconditioned. This contract does not cover fixed end equipment or services (other than warranty services).

Contract Term: The Contract term will be through the duration of the one year warranty period. Because special large quantity and incentive discounts are offered for the radios, this Agreement is intended to be used only for the products shown on Exhibit B unless the Parties otherwise agree to use this Agreement for additional transactions.

FOB POINT - All pricing is FOB Destination and includes all freight costs for a normal ground freight delivery. For critical need items that are ordered by the County on an air-freight basis (next day or 2 day air), the County will pay freight costs per vendor's bid.

Termination: This contract may be terminated in part or in whole by the County upon thirty days advance notice in writing. However, if the County terminates this contract other than for Motorola's default, then Motorola may increase the pricing of the purchased units to reflect a discount structure appropriate for the quantity of units actually purchased.

Unrestricted Quantities: The County is not limited to purchase all of its requirements from this contract.

Safety Requirements: all items must comply with current California State Division of Industrial Safety Orders, O.S.H.A.

Integration Clause: This contract constitutes the entire understanding between the County and the contractor regarding the subject matter thereof. No modification or amendment to an awarded contract (other than extensions) shall be valid unless it is set forth in writing and is signed by the parties hereto.

Invoicing: For payment purposes, the vendor shall obtain a "contract

shipping order number" (CSO#) from the County Department placing the order. These are individually numbered for control purposes, and each separate order/invoicing will require a unique CSO# to be issued to the vendor by the ordering County customer.

Prepare invoices in duplicate. Include the CSO# on the invoice. Send the original and duplicate copies of invoices to the ordering department's "bill to" address.

Indemnification: The contractor shall indemnify, defend and hold harmless County, its officers, agents, employees and representatives, from and against any and all claims, losses, liabilities, or damages, demands and actions arising out of or resulting from the performance of this agreement, caused in whole or in part by any negligent or willful act or omission of the contractor, its officers, agents, employees, representatives, or anyone directly or indirectly acting on behalf of the contractor, regardless of whether caused in part by a party indemnified hereunder.

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 will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Compliance with all laws: Contractor shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives, and laws and the awarded contract shall be deemed to be executed within the state of California and construed with and governed by the laws of the state of California.

CHILD SUPPORT COMPLIANCE CERTIFICATION:

a) CONTRACTOR shall comply with all applicable state, federal and local laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code and Chapter 2.160 of the Sacramento County Code. CONTRACTOR shall comply with all earnings assignment orders with respect to its employees and shall

provide the names of all new employees to the New Hire Registry maintained by the California Employment Development Department;

b) Failure to comply with state and federal reporting requirements regarding CONTRACTOR'S employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment shall constitute a default under this Agreement. Failure to cure each default within 90 days of notice by the County shall be ground for termination of the contract.

EQUIPMENT WARRANTY. For one (1) year from the date of shipment, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, for one (1) year from the date of shipment, 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.

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; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (v) defects or damage caused by Customer's failure to comply with all applicable industry and OSHA standards; (vi) Equipment that has had the serial number removed or made illegible; (vii) batteries (because they carry their own separate limited warranty); (viii) freight costs to ship Equipment to the repair depot; (ix) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (x) normal or customary wear and tear.

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.

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.

*** Target value changed ***
*** Text changed ***