

# ORANGE COUNTY EQUIPMENT AND SERVICES PRICE BOOK AGREEMENT # MA-060-21010004

## 800 MHZ COUNTYWIDE COORDINATED COMMUNICATIONS SYSTEM



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# INTRODUCTION

Motorola is pleased to present the **Orange County Equipment Price Book**. The equipment type, models and prices shown are from Motorola's **Agreement # MA-060-21010004, Dated May 21, 2020** to provide a coordinated communications system to the numerous agencies in the County of Orange. Motorola agrees to offer equipment and contract prices contained within the price book to any other public agency (i.e., city, district, public authority, public agency, authorized private agencies, municipality and other political sub-division or public corporation of California). Each agency may contract directly through Motorola for equipment as required.

All equipment offered in the price book meets the operational requirements established by the 800 MHz CCCS Governance Committee and 800 MHz Users Group for system compatibility. The price book contains a brief overview of the 800 MHz CCCS Voice System, recommended products, and descriptions.

The Terms and Conditions of the Price Book will not change unless both the County and Motorola agree to changes in writing. However, products and services in the Price Book will change as products are cancelled and new products are released.

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**For Product, Equipment, System Engineering, or Service information,  
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# EXHIBIT A: SYSTEM OVERVIEW

## 2.1 800 MHZ COUNTYWIDE COORDINATED COMMUNICATIONS SYSTEM (CCCS)

## 2.2 800 MHZ CCCS RADIO SYSTEM

The 800 MHz Countywide Coordinated Communications System (800 MHz CCCS) participating public safety and public service organizations provide the existing radio communication system throughout Orange County with the Motorola *ASTRO* Digital/Analog Trunked 800 MHz *SmartZone* radio system.

## 2.3 800 MHZ CCCS RADIO SYSTEM CAPABILITIES

- Provides Countywide agency interoperability
- Provides expanded coverage throughout the County
- Provides improved emergency response for all citizens in Orange County
- Increases personnel safety and productivity
- Enhances mutual aid communications capability
- Improves ability to respond to major disasters (i.e., fires, floods)

The 800 MHz CCCS provides effective and reliable radio communications for routine interagency operations as well as interagency communications throughout the region during mutual aid and disaster operations.

**Public Safety** includes all law enforcement, fire service, EMS, lifeguard and disaster preparedness agencies in Orange County.

**Public Service** includes other participating organizations in Orange County whose primary responsibility is providing non-public safety services.

## 2.4 CONVENTIONAL MUTUAL SYSTEM

A separate 800 MHz Conventional Mutual Aid System was implemented, to provide Mutual Aid communications capabilities at the local, County, Regional, State and National levels.

## 3.3 WARRANTY

### 3.4 PRODUCT WARRANTY

Motorola warrants that all subscriber Mobiles, Portable, Accessories, Parts and Fixed Equipment products provided in the 800 MHz CCCS “Price Book” will be free from defects in design, material, and workmanship for the Warranty Period of 1 year from date of shipment as provided in the Motorola Standard Commercial Warranty, or upon beginning of any other specified warranty period. Motorola will repair or replace defective parts free of charge, including freight, during the product warranty period. Future subsystems warranty periods will be determined at the time of purchase.

### 3.5 PARTS WARRANTY

For one (1) year from the date of shipment to Licensee, Motorola warrants that component parts and boards that it provides under this Agreement will be free from material defects in materials and workmanship under normal use and service.

### 3.6 SERVICES

Repairs under the standard 1 year warranty can be made at any qualified Motorola Service Center, or Motorola Subscriber Depots. Repairs under the 3-5 year extended warranty must be made at a Motorola Subscriber Depot. Motorola will pay for outbound shipping via Motorola’s normal shipping methods. For repair issues please call (800) 814-0601 or e-mail Motorola Customer Care at [customercare.services@motorolasolutions.com](mailto:customercare.services@motorolasolutions.com).

### 3.7 MAINTENANCE AGREEMENT FOR SELECT SUBSCRIBER RADIOS

Motorola can offer a maintenance agreement for Motorola equipment that does not have the Essential Service option available. Maintenance costs can be obtained from your Motorola Account Manager at the time of equipment price quotation.

### 3.8 ENGINEERING AND TECHNICAL SERVICES

Motorola can provide engineering and technical services to help satisfy particular requirements for existing or future needs. This includes, but is not limited to Engineering, Project Management, System Technologist and Installation services. Services can be purchased via the Orange County Price Book. The cost for services can be based on an 8 hour day or quoted per task or job.

### 3.9 ONLINE MOTOROLA SHOP

Customers may now take advantage of ordering parts and accessories, push to talk solutions and walkie talkies online at <https://shop.motorolasolutions.com/>.



Customer	Order Number
Fullerton Fire Dept	1000404369
Fullerton Police Dept	1000816598
Fullerton Public Works	1000557259

Customer	Order Number
<b>G—I</b>	
Garden Grove Fire Dept	1000404400
Garden Grove Police Dept	1000404418
Garden Grove Public Works	1000404393
Huntington Beach Fire Dept	1000428632
Huntington Beach Lifeguards	1000561177
Huntington Beach Police Dept	1000561177
Huntington Beach Public Works	1000561177
Irvine Police Dept	1000324872
Irvine Public Works	1000324872
Irvine Valley College	1012565521
<b>J—N</b>	
John Wayne Airport	1036315506
La Habra Fire Dept	1036253003
La Habra Police Dept	1000404434
La Habra Public Works	1000404434
La Palma Police Dept	1000404468
La Palma Public Works	1000761272
Laguna Beach Fire Dept	1036127315
Laguna Beach Lifeguards	1000561424
Laguna Beach Police Dept	1000428960
Laguna Beach Public Works	1000428690
Laguna Hills Police Services	1036067610
Laguna Hills Public Works	1036067610
Laguna Niguel Police Services	1012565571
Laguna Niguel Public Works	1012565571
Laguna Woods Police Services	1036152487
Laguna Woods Public Works	1036152487

# EXHIBIT A: MOBILE RADIOS

## 5.1 APX 6500 PROJECT 25 DIGITAL MOBILE RADIOS 700/800 MHZ



**Figure 5-1: APX 6500 Enhanced Mobile Shown with O7 Control Head**

From street patrols to multi-agency response APX 6500 Enhanced mobiles provide the highest level of interoperability. APX mobiles can work across multiple digital and analog networks from conventional, to SMARTNET® and SmartZone® to ASTRO® 25 providing true P25 interoperability. The APX 6500 has evolved to support newer technologies like Wi-Fi, and SmartConnect. Direct cloning with Legacy models will not be available.

### **Control Head Variety**

The APX 6500 Enhanced mobile is available with the O7, control head, O5 control head, O2 control head and the O3 handheld control head. In addition, the APX 6500 is available in a dual control head configuration. The County recommends the O7 control head.

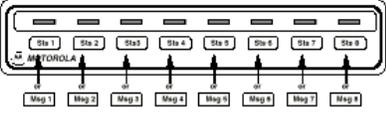
### **Enhanced Frequency Spectrum Utilization**

The APX 6500 Enhanced mobile radio is designed to offer multiple frequency band solutions for perfect system optimization in congested urban areas or wider country regions. Motorola currently offers the 700/800 MHz dual band (764-870MHz), 10-35 watt variable power, VHF (136-174 MHz), UHF Range 1 (380-470 MHz) and UHF Range 2 (450-520 MHz).

*RADIO PACKAGES NOT LISTED ARE 27.5% OFF LIST AND ACCESSORIES ARE 20% OFF LIST PER SECTION 9 "ADDITIONAL DISCOUNTS" SECTION OF THIS PRICE BOOK. ALL OTHER DISCOUNTS FOR PRODUCTS AND SERVICES ALSO LISTED IN SECTION 9. FOR SPEAKER MICS AND ADDITIONAL ACCESSORIES PLEASE REFER ACCESSORIES CATALOG. <https://shop.motorolasolutions.com/? ga=2.209673489.265811969.1588006669-1558378512.1587576280>*

## 5.7 APX 6500 ENHANCED MOBILE ACCESSORIES AND SERVICE OPTIONS

### 5.8 APX 6500 ACCESSORIES

Model/Option	Description	Unit price
W599	<p>8 Status/Message (1 Supplemental Housing) Requires Remote Mount Configuration. This is part number and pricing if ordered with the radio.</p> 	\$144

### 5.9 APX 6500 ENHANCED MOBILE SERVICE OPTIONS

Model	Description	Unit Price
<b>G78</b>	<p><b>ENH: 3 ESSENTIAL SERVICE</b> Provides 3 years of extended hardware repair coverage beginning after the standard warranty period expires. Repairs will be made only at the designated Motorola repair depot. Local services are not included. Motorola will pay the inbound shipping charges only with use of the Motorola designated delivery service. Motorola will pay for outbound shipping via Motorola's normal shipping methods. No discounts are allowed on this option.</p>	Included in Radio Configuration
GA00318	<p><b>ENH:5 YEARS ESSENTIAL SERVICE</b> Provides 4 year of extended hardware repair coverage beginning after the standard warranty period expires. Repairs will be made only at the designated Motorola repair depot. Local services are not included. Motorola will pay the inbound shipping charges only with use of the Motorola designated delivery service. Motorola will pay for outbound shipping via Motorola's normal shipping methods. No discounts are allowed on this option.</p>	\$319
GA00249AC	<p><b>ENH: 3 YR ESSENTIAL ACCIDENTAL DAMAGE</b> Provides for extended hardware repair coverage and chemical, liquid, and other physical damage on your Motorola portable and mobile subscriber radios. Comprehensive coverage starts from the first day the radio is put into use. Repairs will be made only at the designated Motorola repair depot. Local services are not included. Motorola will pay the inbound shipping charges only with use of the Motorola designated delivery service. Motorola will pay for outbound shipping via Motorola's normal shipping methods. No discounts are allowed on this option.</p>	\$506

5.23

APX 6500 ENHANCED HOT RED RECEIVER MOBILE RADIO

Package Price for both Red and Green Mobiles: \$11,851

Model	Description- Hot Red Mobile (Green Radio)
M25URS9PW1BN	APX6500 ENHANCED 700/800 MHZ MID POWER MOBILE 10-35 WATT
G51	ADD: SMARTZONE OPERATION
G806	ADD: ASTRO DIGITAL CAI OPERATION
GA00805	ADD: APX 07 CONTROL HEAD
G444	ADD: CONTROL HEAD SOFTWARE
G843	ADD: AES ENCRYPTION
G298	ENH: ASTRO 25 OTAR W/ MULTIKEY
G361	ADD:P25 TRUNKING
G67	ADD: REMOTE MOUNT MID POWER
G335	ADD: ANT 1/4 WAVE 762-870 MHZ
W22	ADD: PALM MICROPHONE
B18	ADD: AUXILIARY SPKR 7.5 WATT
W599	ADD: 8 MODE DIRECT ENTRY
GA001115	ADD: DUAL RADIO STACKABLE MID POWER TRUNNION
GA01113AA	ENH: DUAL RADIO OPERATION (PRIMARY RADIO)
G996	ADD: PROGRAMMING OVER P25 (OTAP)
GA00235	ADD: NO GPS ANTENNA NEEDED
GA09008	ADD:GROUP SERVICES
G24	ADD: 3 YEAR ESSENTIAL SERVICE
	<b>GREEN RADIO PRICE \$6,264</b>
Model	Description- Hot Red Mobile (Red Radio)
M25URS9PW1 BN	APX6500 ENHANCED 700/800 MHZ MID POWER MOBILE 10-35 WATT
G51	ADD: SMARTZONE OPERATION
G806	ADD: ASTRO DIGITAL CAI OPERATION
G361	ADD:P25 TRUNKING
G88	ADD: NO CONTROL HEAD NEEDED
G444	ADD: CONTROL HEAD SOFTWARE
G843	ADD: AES ENCRYPTION
G67	ADD: REMOTE MOUNT MID POWER
G335	ADD: ANT 1/4 WAVE 762-870 MHZ
G90	ADD: NO MICROPHONE NEEDED
B18	ADD: AUXILIARY SPKR 7.5 WATT
G996	ADD: PROGRAMMING OVER P25 (OTAP)
GA01117AA	ENH: DUAL RADIO OPERATION (SECONDARY RADIO)
GA00235	ADD: NO GPS ANTENNA NEEDED
G298	ENH: ASTRO 25 OTAR W/ MULTIKEY
GA09008	ADD:GROUP SERVICES
G24	ADD: 3 YEAR ESSENTIAL SERVICE
	<b>RED RADIO PRICE \$5,587</b>

NOTE: Hot Red Radio packages come with two antennas. For service plan options refer to APX6500 Service Plan Section. Will need to add plan to both green and red radios separately.

SECTION 10

**10.1 EXHIBIT A: ADDITIONAL DISCOUNTS**

Blanket discount applies to the section as stated, with specific Exceptions as stated.

Pricing shall be in accordance with Motorola Solutions Systems PCAT Electronic Catalog.

Discounts only apply to specific main line and options.

All subscription based products and services will be subject to Motorola’s Subscriptions Services Agreement.”

Equipment and Services	Discount %
APX Next Hardware	10%
APX Series Radio Packages	27.5%
APX Radio Accessories if not Ordered in a Radio Package	20%
Automatic License Plate Recognition (ALPR)	15%
Broadband	0%
CAD/RMS/Jail/Mobile Applications	5%
Command Central Suite	5%
Comparators	14%
Consoles	14%
Conversion Kits (Subscribers)	20%
Crime Analysis and Visualization	5%
Critical Connect	0%
Data Products	5%
Desksets	14%
Digital Evidence Mangement (DEMS)	5%
Dispatch Furniture	10%
NG911- Including but not limited to: -Vesta -Emergency Call Works	5%
Encoders	4%
Enhanced Statistical Awareness Tools	10%
Fixed Data Products	14%
Fixed Stations- Including, but not limited to: ▪ Repeaters / Receivers	19%
Fixed Station Accessories	4%
Fixed Station Antenna Systems	4%

Equipment and Services	Discount %
Fixed Station Controls- Including, but not limited to: -MCC7500 -MCC7500e -Avtec -Monitoring and Control Stations -911 -Logging Recorders -AXS Console -Other Consoles/Equipment	14%
Hardware and Software Not Listed	5%
LEX Devices	15%
Mobile Accessories	20%
Mobile Radios/Stations Not Listed	10%
MSB Building	4%
Networking Products	14%
Portable Accessories	20%
Portable Radios Not Listed	10%
Predictive Analytics	10%
Receivers	19%
Trunked Systems	14%
Social Media Analytics	5%
Software Solutions	5%
Subscriber FLASHport Software Upgrade	27.5%
Subscription Services	0%
Motorola Parts and Accessories (if not in a radio package)	20%
Non-Motorola Mfg. Items/Drop Ship	4%
Motorola Radios Not Listed	20%
Private LTE	5%
Video Solutions-Including but not limited to: -Avigilon -Vigilant -WatchGuard -Fixed Video -In Car Video	0%
Virtual Collaboration Tools	0%
<b>SERVICES AND TRAINING</b>	
Depot Repair- Current flat rate fees apply for time and material. Discounts available if Depot Service Contract signed with Motorola.	0%
Engineering or Project Management. Contact Motorola Account Manager	\$0% Price Will Vary
Other Services-Including but not limited to: Maintenance and Support and SUA. Will vary according to project scope. Contact Motorola Account Manager for quote.	0% Price Will Vary

## 10.2 NOTES

1. For equipment that is not listed out individually or in packages please see Section 9 “Additional Discounts” section of the price book for discount level.
2. The base part number will always stay the same. However, occasionally a suffix on a part number will be changed.
3. Existing suffixes on a part numbers are subject change. However, the base part number will always stay the same.
4. Product description may vary slightly depending on which source information on a particular product is pulled from.
5. No discounts available on flash upgrades; however, a discount is available on software options, if purchased with radios.
6. Service pricing will vary depending on project scope and resources needed. Please contact Motorola Sales Representative for services quotes.
7. If a part is discontinued it may be replaced with a substituted part that has the same functionality and quality.

# TERMS AND CONDITIONS

## 11.1 PRICE BOOK AGREEMENT

### County of Orange and Motorola, Inc. Price Book Agreement

Motorola Solutions, Inc., formerly Motorola, Inc., and the County of Orange propose the following changes to Amendment No. 3 to Agreement Number S0000015.95 (Amendment) as the basis for a new Agreement between the Parties for purchasing Equipment, software and related services. This new County Price Book Agreement is number 060-15011560.

#### Recitals

1. The County of Orange (“County”) desires to purchase from Motorola Solutions, Inc. (“Motorola”) various products, equipment, software from Motorola’s Price Book, and related services.
2. The County contract Number S0000015.95 with Motorola expired on May 20, 2010, and was replaced with County Price Book Agreement MA-060-10012594. County Price Book Agreement MA-060-15011560 expires on May 21, 2020, and this Agreement is the new contract replacing County Price Book Agreement MA-060-10012594 by which the County may purchase products, equipment, software and related services from Motorola. MA-060-15011560 Replaced with Contract # MA-060-21010004 which Expires on May 20, 2025.
3. Motorola has a published price book containing the products, equipment, software, and related services, and is offering it to the County.

#### Terms

County and Motorola agree as follows:

#### Section 1 Exhibits

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits.

- Exhibit A Orange County Price Book (See Section 1 through 9 above.)
- Exhibit B Motorola Software License Agreement
- Exhibit C County Participants

Exhibit A may be amended from time to time to add, delete, or change offered products as new products become available or existing products become obsolete.

## Section 2 Definitions

“Contract Participants” are more particularly described in Exhibit C.

“Customer” means the County and any of its Contract Participants.

“Effective Date” means that date upon which the last party to sign this Agreement has executed this Agreement.

“Equipment” means the hardware and components listed in the Orange County Price Book.

“Infringement Claim” means a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software infringes upon the third-party’s United States patent or copyright

“Motorola Software” means Software that Motorola owns.

“Non-Motorola Software” means Software that a party other than Motorola owns.

“Party” means Customer or Motorola, as the context indicates; “Parties” means both of them.

“Price Book” means the Orange County Price Book dated May 21, 2020 (Exhibit A).

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trade marks, 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 made by Motorola or another party.

“Software” means the Motorola and Non-Motorola Software in object code format that is furnished with the Equipment.

“Software License Agreement” means the agreement in Exhibit B.

## Section 3 Terms of the Agreement

3.1 Terms of Purchase. This Agreement shall apply only to purchases of products, equipment, software, and related services that occur on or after the Effective Date. Also, this Agreement may be used for system transactions, provided that necessary additional documents are mutually agreed; these additional documents may include a system description, statement of work, equipment list, acceptance test plan, project schedule, payment milestone schedule, and supplemental terms and conditions that apply to that system transaction but which do not generally modify this Agreement. Although pricing for system transactions will be based off of the Orange County Price Book, nothing in this Agreement precludes Motorola from offering additional discounts such as a system discount.

3.2 Controlling Terms and Conditions. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of



the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

3.3 Change Orders. Either Party may request changes within the general scope of this Agreement. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.4 Term. Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement will begin on the Effective Date and shall continue until May 20, 2025.

3.4.1. Termination for Convenience. Notwithstanding any other provision of this Agreement, the Customer may, at any time, and without any cause, terminate this Agreement in whole or in part, upon not less than seven (7) days' written notice to Motorola. Such termination shall be effected by delivery to Motorola of a notice of termination specifying the effective date of the termination and the extent of the Work (i.e., ordered products and/or services) to be terminated. Motorola shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the Customer. Customer shall pay Motorola for the Work completed prior to the effective date of the termination, and such payment shall be Motorola's sole remedy under this Agreement. Under no circumstances will Motorola be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

3.5 Maintenance Service. This Agreement does not cover maintenance or support of the Equipment except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

3.6 Non-Motorola Software. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by

Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

- 3.7 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. 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.
- 3.8 Services. If services are being provided, they will be provided at the location specified in the description of the services. Unless otherwise stated in the description of the services, the hours of service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in the description of the services, the price for the services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the services and agreed to by Customer prior to incurring such expenses, Customer agrees to reimburse Motorola for those charges and expenses.
- 3.9 Any subscription based services or products purchased will be subject to Contractor's Subscription Services Agreement, a copy of which is available upon request.

#### **Section 4 Payment Requirements**

- 4.1 Terms of Payment. Motorola will submit to Customer invoices for Equipment or Software when they are delivered and for related services when they are performed (but no more frequently than monthly). Customer will make payments to Motorola within thirty (30) days after receipt of Motorola's 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. Payments made by Customer shall not preclude the right of Customer from thereafter disputing any Equipment or service billed under this Agreement and shall not be construed as acceptance of the Products.
- 4.2 Freight, Title and Risk of Loss. All freight charges will be pre-paid by Motorola and added to the invoices. Title and risk of loss to the Equipment will pass to Customer upon delivery to Customer, except that title to Software will not pass to Customer at any time but is licensed. Motorola will pack and ship all Products in accordance with good commercial practices.

- 4.3 Invoicing Instructions. As a condition of payment of any invoice, the Customer must receive an invoice in an acceptable format, including Motorola's Federal I.D. number (36-1115800) and the California seller's permit number (SR SOHA 30-616008), if applicable. In addition, sufficient itemization and/or description, including the serial numbers of any equipment items, must appear on the invoice. Dollar amounts, extensions and totals must be correct. When appropriate, dollar amounts for taxes, freight or any other fees must be adequately described and itemized.

## **Section 5 Pricing**

The pricing of the Equipment, Software, and services is controlled by the Orange County Price Book. The prices in the Orange County Price Book for Equipment and Software are a fixed discount off of the list price for specific categories of Equipment or Software. The applicable list price shall be the list price in effect on the date of the order. However, Motorola will provide Customer with reasonable notice and a 30 day grace period before any price change will take effect. If a new product is added to the Price Book, Motorola reserves the right to establish a fixed discount for the new product. Any discount not meeting the category discount shall be by mutual agreement of the Parties.

## **Section 6 Acceptance**

Acceptance of the Equipment will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Equipment will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of any Equipment or Software for their operational purposes will constitute acceptance. Equipment shall not be accepted for purposes of this section if returned by the Customer for Equipment that is not conforming to the order, defective or unsatisfactory.

## **Section 7 Representations and Warranties**

- 7.1 Equipment Warranty. For one (1) year from the date of delivery, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. Motorola shall repair or replace equipment or parts during the warranty period. All parts and labor shall be included by Motorola at no charge. If a piece of equipment fails or operates at less than the manufacturer's designed specifications three times for the same or similar reason, within its warranty period, Motorola will replace the piece of equipment at Customer's request and at Motorola's cost.
- 7.2 Software Warranty. For one (1) year from the date of delivery, 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.

- 7.3 Services Warranty. For 90 days from the date the services were performed, Motorola warrants that the services were performed in a good and workmanlike manner, consistent with industry practices.
- 7.4 Exclusions to Equipment and Software Warranties. These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or Software in other than its normal, customer, 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 by Customer's failure to comply with all applicable industry and OSHA standards; (v) Equipment that has had the serial number removed or made illegible; (vi) batteries (because they carry their own separate limited warranty); (vii) scratches or other cosmetic damage to Equipment surfaces that does not affect operation of the Equipment; and (viii) normal or customary wear and tear.
- 7.4 Warranty Claims. Motorola will, 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 upon verbal notification by Customer. Motorola will, at no additional charge to Customer, re-perform defectively performed services upon verbal notification by Customer. Such action will be the full extent of Motorola's liability hereunder. 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 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.
- 7.5 Parts Availability. Motorola will use best commercially reasonable efforts to provide replacement parts for Motorola manufactured subscriber equipment for five (5) years and for Motorola manufactured fixed infrastructure equipment for seven (7) years from the date at which the product is no longer shipped. Motorola reserves the right to supply either assemblies or piece parts. Concerning non-Motorola manufactured Equipment; if Motorola receives written notice from a third party vendor that it intends to cancel any Equipment it provides, Motorola shall provide Customer written notice prior to the scheduled cancellation to provide Customer the opportunity to purchase replacement parts.
- 7.6 Third Party Warranty. Motorola will pass through to Customer on a non-exclusive basis any assignable third party warranties that exceed the Motorola warranty provided in this Agreement. Motorola will not assume any obligations concerning the pass-through third party warranties.
- 7.7 Original End User is Covered. These express limited warranties are extended by Motorola to the original user purchasing the Equipment or Motorola Software for commercial, industrial, or governmental use only, and are not assignable or transferable.



- 7.8 EQUIPMENT COMPATIBILITY Equipment provided pursuant to this Agreement must operate in a manner compatible with the County's Countywide Coordinated Communications System ("CCCS").
- 7.9 DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS, EQUIPMENT, MOTOROLA SOFTWARE, AND SERVICES PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES, THE PRODUCTS, EQUIPMENT MOTOROLA SOFTWARE, AND SERVICES ARE PROVIDED "AS IS" AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING THE PRECEDING SENTENCE, MOTOROLA EXPRESSLY WARRANTS THAT ALL PRODUCTS, EQUIPMENT AND SOFTWARE PROVIDED UNDER THIS AGREEMENT IS MERCHANTABLE (WITHIN THE MEANING OF SECTION 2314 OF THE CALIFORNIA COMMERCIAL CODE) AND THAT SUCH PRODUCTS, EQUIPMENT AND SOFTWARE IS SUITABLE AND FIT FOR THE PARTICULAR PURPOSE OF USE AS A REGIONAL RADIO COMMUNICATIONS SYSTEM. MOTOROLA DOES NOT WARRANT THAT LICENSEE'S USE OF THE MOTOROLA SOFTWARE OR PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

## **Section 8 Conflicts of Interest**

Motorola shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict of interest of the County or other third parties named in Exhibit C. This obligation shall apply to Motorola's employees, agents, relatives, sub-tier contractors, and third parties associated with the Equipment and Software in this Agreement. Motorola may not make, receive, provide, or offer gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the interest of the County or third parties named in Exhibit C.

## **Section 9 Delays/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 (15) days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

## **Section 10 Disputes**

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

- 10.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of California.
- 10.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and direct communication between the executives. If the Dispute has not been resolved within thirty (30) days from the Notice of Dispute, the Parties will proceed to mediation.
- 10.3. **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.
- 10.4. **LITIGATION, VENUE AND JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, or the Dispute concerns intellectual property, either Party may then submit the Dispute to a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- 10.5. **CONFIDENTIALITY.** All communications pursuant to subsections 10.2 and 10.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

## **Section 11 Patent and Copyright Infringement Indemnification**

Motorola will defend at its expense any suit brought against Customer to the extent it is based on an Infringement Claim, and Motorola will indemnify and hold harmless Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend, indemnify and hold harmless are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

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

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

## **Section 12 Limitation of Liability**

Except for personal injury or death, Motorola's and Customer'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 AND CUSTOMER 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. On no instance shall the limitation of liability impair the County's ability to seek remedy for damages through the Contractor's insurance carrier for the primary limit and coverage up to \$5,000,000. This limitation of liability provision survives the expiration or termination of the Agreement.

## Section 13 Proprietary Rights

- 13.1 Proprietary Rights of Equipment and Software. Motorola owns and retains all of its Proprietary Rights in the Equipment and Software. The third party manufacturer of any Equipment and the copyright owner of any Non-Motorola Software own and retain all of their Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any copyright owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment and Software remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property.
- 13.2 Software License. Except as explicitly provided in the Software License agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Concerning both the Motorola Software and Non-Motorola Software, Customer agrees not to 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.

## Section 14 General

- 14.1 Taxes. The Agreement Price does not include any amount for federal, state, or local excise, sales, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Motorola's income or net worth), all of which will be paid by Customer except as exempt by law. If Motorola is required to pay or bear the burden of any such taxes, Motorola will send an invoice to Customer and Customer will pay Motorola the amount of such taxes (including any applicable interest and penalties) within thirty (30) days from receipt of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes.
- 14.2 Assignability. 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 or delayed. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola is involved in a major corporate restructuring (such as a sale, acquisition, establishment of a joint venture, spin-off or otherwise (each a "Separation Event")), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement as part of or following the Separation Event. Motorola shall provide Customer reasonable written notice of a Separation Event.

- 14.3 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, or excuse for any other different or subsequent breach.
- 14.4 Validity. The invalidity in whole or in part of any provision of this Agreement as mutually agreed to by the Parties, or as adjudicated by a court of competent jurisdiction, does not void or affect the validity of any other provision of this Agreement.
- 14.5 Independent Contractors. Nothing contained in this Agreement shall be construed as creating the relationship of employer/employee or principal/agent.
- 14.6 Governing Law. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, provided that no provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties. No lawsuit pertaining to any matter arising under or growing out of this Agreement shall be instituted in any state other than California.  
Any legal proceeding with respect to this Agreement shall be filed in the appropriate Court of the State of California in Orange County, California consistent with Section 10.4, above.
- 14.7 Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by email, and shall be effective upon receipt:

**Motorola Solutions, Inc.**

Attn: Kim Caplan  
Sr. Account Manager  
6450 Sequence Drive  
San Diego, CA 92121  
O: 760-630-5199  
M: 858-442-3979

**Orange County**

Attn: Dave Fontneau  
Division Director  
840 N. Eckhoff St., Suite 104  
Orange, CA 92868  
O. 714-704-7919

- 14.8 FCC Licenses. Customer will obtain and comply with all Federal Communications Commission (“FCC”) licenses and authorizations required for the installation, operation and use of Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.
- 14.9 Indemnity. Motorola agrees to indemnify, defend, protect, investigate any claims, and to hold harmless the County and third parties named in Exhibit C, their

officers, elected officials, employees and agents from and against any and all claims, demands or liability established resulting from damages or injuries to persons or property which arise from or are related to negligent errors, acts or omissions of Motorola and its agents under this Agreement; Motorola shall not however indemnify, defend, protect and hold harmless the County or third parties named in Exhibit C from claims, demands, or liability arising from the negligence as it relates to the errors, acts or omissions of the County or the third parties named in Exhibit C. Motorola's obligations under this provision shall not affect the right of the Customer to appear and to participate in legal actions against third parties bringing such suits. The Customer may take other action necessary to protect its interests. If Motorola's negligence combines with the negligence of the County or other third parties named in Exhibit C to cause injury, the Parties agree that liability will be apportioned as determined by a court of competent jurisdiction. Neither party shall request a jury apportionment.

- 14.10 Authority to Execute Agreement. Each Party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under the Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.
- 14.13 Equipment End of Life Cycle. Motorola reserves the right to stop selling or shipping Equipment at any time. However, Motorola will provide Customer with a written notice of cancellation of Motorola manufactured Equipment one (1) year prior to the cancellation date. Motorola has no control over third-party vendors' end of life cycle plans for the non-Motorola manufactured Equipment. If a third-party vendor cancels its non-Motorola manufactured Equipment or files for bankruptcy, Motorola will use commercially reasonable efforts to obtain equivalent Equipment from another source.
- 14.14. Insurance Requirements. During the term of this Agreement, Motorola will obtain and maintain at its expense all insurance as required below and will provide to the County a Certificate of Insurance and all required endorsements that are necessary to indicate compliance with these insurance provisions. In addition, all subcontractors performing work on behalf of Motorola pursuant to this Agreement shall obtain and maintain similar insurance as determined by the Motorola Insurance Department, excluding Professional Liability which does not apply to subcontractors. Motorola is responsible for all self-insured retentions (SIRs) and deductibles. Motorola declares that its deductibles are in an amount in excess of \$25,000. If Motorola fails to maintain insurance acceptable to the County as described herein during the term of this Agreement, the County may terminate this Agreement as provided above in Section \*.

**Qualified Insurer**

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<b>Coverage</b>	<b>Minimum Limits</b>
Commercial General Liability	\$1,000,000 per occurrence 2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

### **Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance and be provided per applicable insurance regulations:

An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, and employees as Additional Insureds.

The CGL shall be primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers Compensation policy required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, and employees when acting within the scope of their appointment or employment.

The Workers Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, and employees.

Motorola shall give the County of Orange 30 days notice in the event of cancellation and 10 days notice for non-payment of premium. If Motorola's Professional Liability policy is a "claims made" policy, it shall maintain professional liability coverage for two years following completion of the Agreement.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to: the County of Orange at an address it designates.

Subject to the mutual agreement of the Parties, County expressly retains the right to require Motorola to increase or decrease insurance of any of the above insurance types throughout the term of this Contract as deemed by County of Orange Risk Manager as appropriate to adequately protect County. County shall notify Motorola in writing of changes in the insurance requirements. If Motorola does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Agreement (but not pending orders) may be terminated by County for its convenience.

The procuring of such required policies of insurance shall not be construed to limit Motorola's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

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

**Motorola Solutions, Inc.**

**Customer**  
**ORANGE COUNTY, CALIFORNIA**

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

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

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

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

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

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

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

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



# EXHIBIT B: SOFTWARE LICENSE AGREEMENT

## Exhibit B

### Software License Agreement

This Exhibit B Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and the County of Orange, a political subdivision of the State of California ("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 under 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 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 Motorola's shipment 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. (Covered by the primary agreement.)

13.4. GOVERNING LAW. 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.

# EXHIBIT C: COUNTY PARTICIPANTS

City	Responsible Administrator	Address	Phone #
Aliso Viejo	City Manager	12 Journey #100 Aliso Viejo, CA 92656	949/425-3800
Anaheim	City Manager	200 S. Anaheim Blvd. P.O. Box 3222 Anaheim, CA 92805	714/765-5162
Brea	City Manager	1 Civic Center Circle Brea, CA 92821-5732	714/990-7770
Buena Park	City Manager	6650 Beach Blvd. P.O. Box 5009 Buena Park, CA 90622	714/562-3550
Costa Mesa	City Manager	77 Fair Drive P.O. Box 1200 Costa Mesa, CA 92626	714/754-5327
Cypress	City Manager	5275 Orange Avenue P.O. Box 609 Cypress, CA 90630	714/229-6688
Dana Point	City Manager	33282 Golden Lantern, Suite 210 Dana Point, CA 92629	949/248-3513
Fountain Valley	City Manager	10200 Slater Avenue Fountain Valley, CA 92708	714/593-4410
Fullerton	City Manager	303 W. Commonwealth Fullerton, CA 92832	714/738-6310
Garden Grove	City Manager	11222 Acacia Parkway P.O. Box 3070 Garden Grove, CA 92840	714/741-5100
Huntington Beach	City Administrator	2000 Main Street P.O. Box 190 Huntington Beach, CA 92648	714/536-5575
Irvine	City Manager	1 Civic Center Plaza P.O. Box 19575 Irvine, CA 92606	949/724-6249
Laguna Beach	City Manager	505 Forest Avenue Laguna Beach, CA 92651-2394	949/497-0704