

RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT

A CONTRACT BETWEEN

HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas

AND

MOTOROLA, INC.
Farmers Branch, Texas

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND **Motorola, Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 1507 LBJ Freeway, Suite 700, Farmers Branch, Texas 75234.

WITNESSETH

WHEREAS: The **H-GAC** enters into this Contract as Agent for participating governmental agencies, hereinafter referred to as **END USER**, for the purchase of **Radio Communication/Emergency Response & Mobile Interoperable Equipment** offered by the **CONTRACTOR**; and

WHEREAS: The **CONTRACTOR** offers to sell **Radio Communication/Emergency Response & Mobile Interoperable Equipment** through the **H-GAC** Contract to End Users; and

WHEREAS: The Contract shall be in effect for a period beginning January 1, 2008 through December 31, 2009, subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**; and now

THEREFORE: **H-GAC** and the **CONTRACTOR** do hereby agree as follows:

• GENERAL PROVISION ARTICLES 1 - 23 •

ARTICLE 1:

IDENTIFICATION OF CONTRACT DOCUMENTS

The Contract shall be in effect for **Radio Communication/Emergency Response & Mobile Interoperable Equipment** listed in Proposal Specifications numbered **RA01-08**, including any relevant suffixes, and shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including Attachment A, and Attachment B (Motorola Standard Equipment Warranty)
2. **CONTRACTOR'S** Response to Proposal No.: **RA01-08**
3. Proposal Specifications No.: **RA01-08**
4. System Purchase Agreements
5. Motorola Software License

The terms and conditions, specifications, manufacture, delivery, warranty, training and service for **H-GAC** and the **END USER** shall be fulfilled in compliance with this Contract including, but not limited to Proposal Specifications, Terms and Conditions, and **CONTRACTOR'S** response opened October 4, 2007 unless specifically changed within the text of this Contract Form.

ARTICLE 2:

LEGAL AUTHORITY

The **CONTRACTOR** and **H-GAC** warrants and assures one another that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind both parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 3:

APPLICABLE LAWS

Both parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances and ordinances, and laws in effect or promulgated during the term of this Contract. The **CONTRACTOR** agrees to conduct all activities under this **Contract** in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Contract.

ARTICLE 4:

INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or the CONTRACTOR. No provision of this Contract or act of H-GAC in performance of the Contract shall be construed as making the CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom.

CONTRACTOR shall notify H-GAC of any law suits filed against it which involves products sold pursuant to this Contract, or which, if successful, would adversely affect its financial condition. A law suit which includes a specific demand for an amount in excess of \$250,000 which would not be covered by insurance shall automatically be considered a law suit which, if successful, would adversely affect the financial condition of the sued party.

ARTICLE 5:

TITLES NOT RESTRICTIVE

The titles assigned to the various articles of this Contract are for convenience only and are generally descriptive of the matters following. Titles shall not be considered restrictive of the subject matter of any section, or part of this Contract.

ARTICLE 6:

SUBCONTRACTS

The Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC.

H-GAC shall not unreasonably delay or withhold acceptance of a proposed assignment of a proposed subcontractor.

The Contractor acknowledges that H-GAC is not liable to any subcontractor's of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Contract as if the performance rendered was rendered by the Contractor.

ARTICLE 7:

EXAMINATION AND RETENTION OF RECORDS

The CONTRACTOR shall maintain during the course of the work, complete and accurate records of all of the CONTRACTOR'S costs and documentation of items which are chargeable to END USER under this Contract. H-GAC, through its staff or designated public accounting firm, the State of Texas, and the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of the CONTRACTOR. Failure to provide access to records may be cause for termination of the Contract. CONTRACTOR agrees that its books and records, as they pertain to work done or items supplied present to the Purchase Order or Contract shall at all reasonable hours be subject to audit and inspection at the CONTRACTOR'S facility by H-GAC and/or END USER. This audit shall be limited to the verification of invoice quantities to shipments and shipment receipts. Except as otherwise provided by law, nothing contained herein shall authorize H-GAC and/or END USER to audit particular books or CONTRACTOR insofar as such particular books or records contain confidential information regarding product costs.

The CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained.

The CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

ARTICLE 8:

CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the Contractor may terminate its participation herein as authorized by Article 18.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between H-GAC and the Contractor in writing shall be incorporated into this Contract.

ARTICLE 9:

DISPUTES

RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT Page 3 of 10

Any and all disputes concerning questions of fact or of law arising under this Contract which are not disposed of by agreement shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with H-GAC'S final decision.

ARTICLE 10:

SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 11:

FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 12:

NON DISCRIMINATION AND EQUAL OPPORTUNITY

The Contractor agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Contract; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Contract.

ARTICLE 13:

CRIMINAL PROVISIONS AND SANCTIONS

The CONTRACTOR agrees that it will perform the Contract in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of the funding entity. The CONTRACTOR agrees to promptly notify H-GAC of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Contract within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The CONTRACTOR further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

ARTICLE 14:

PURCHASE ORDERS ISSUED PURSUANT TO CONTRACTS

Through Interlocal Contracts, H-GAC offers governmental agencies and **qualifying non-profit corporations** the opportunity to participate in the H-GAC Cooperative Purchasing Program. Therefore, purchase orders may be executed by **END USERS** throughout the State. In addition, through Interstate Interlocal Contracts the Program is now made available for possible participation by **END USERS** beyond Texas.

ARTICLE 15:

SCOPE OF SERVICES

The services to be performed by CONTRACTOR in the State of Texas are outlined within this Contract, Proposal specifications, G:\CONTRACT\RA01-08.8\Motorola\ RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT
Sig Initial: _____

RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT Page 4 of 10
any Attachment, and Proposal Response. Any Change Order shall be stated in complete detail and submitted by **END USER** to **CONTRACTOR** and copied to **H-GAC**. No verbal Change Order shall be accepted by **CONTRACTOR** from any **END USER**.

ARTICLE 16: THE COMPLETE AGREEMENT

This Contract consists of the Contract text stated herein, the Proposal Specifications, including but not limited to Terms and Conditions, proposer's/proposer's response, including but not limited to, prices and options offered all of which are incorporated within the contract, and constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 17: LIMITATION ON LIABILITY

The **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER**, any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

Except for personal injury or death, Motorola's total liability whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular products sold hereunder with respect to which either refund the purchase price, repair or replace product(s) that are not as warranted. In no event will Motorola be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special, or consequential damages to the full extent such may be disclaimed by law.

ARTICLE 18: TERMINATION PROCEDURES

CONTRACTOR acknowledges that this Contract may be terminated under the following circumstances:

A. **Convenience**

H-GAC may terminate this Contract in whole or in part without cause at any time by written notice by certified mail to **CONTRACTOR** whenever for any reason **H-GAC** determines that such termination is in the best interest of **H-GAC**. Upon receipt of notice of termination, all services hereunder of **CONTRACTOR** and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, **CONTRACTOR** shall prepare final invoices within 30 calendar days of such termination reflecting the services actually performed which have not appeared on any prior invoice. Such invoices shall be satisfactory to the Executive Director or his designee. **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this Contract, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this Contract, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

CONTRACTOR may cancel or terminate this Contract upon thirty (30) days written notice by certified mail to **H-GAC**. **CONTRACTOR** may not give notice of cancellation after it has received notice of default from **H-GAC**. In the event of such termination prior to completion of this Contract provided for herein, **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this Contract, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this Contract, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

B. **Default**

H-GAC may, by written notice of default to **CONTRACTOR**, terminate the whole or any part of this Contract in any one of the following circumstances:

- (1) If **CONTRACTOR** fails to perform the services herein specified within the time specified herein or any extension thereof;
or
- (2) If **CONTRACTOR** fails to perform any of the provisions of this Contract for any reason whatsoever, or so fails to make progress or otherwise violates this Contract that completion of services herein specified within the term of this Contract is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) calendar days (or such longer period of time as may be authorized by **H-GAC** in writing) after receiving written notice by certified mail of default from **H-GAC**.

In the event of such termination, all services of **CONTRACTOR** and its employees and subcontractors shall cease and **CONTRACTOR** shall prepare a final invoice reflecting the services actually performed pursuant to this Contract which have not

appeared on any prior invoice. Such invoice must be satisfactory to the **END USER** and to the Executive Director of **H-GAC** or his designee. **END USER** reserves the right, in accordance with the terms and conditions of this Contract, to withhold from the payment

RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT Page 5 of 10

of said invoices for services actually performed and accruing to the benefit of **END USER**, as reflected on invoice, any compensation previously paid and any costs or damages incurred by **END USER** as a result of such default, including incremental costs that **END USER** will incur to have Purchase Order(s) completed by a person other than **CONTRACTOR**. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

C. **Final Billing In the Event of Termination**

CONTRACTOR shall fill all pending orders and then prepare final invoices reflecting the services actually performed pursuant to this **Contract** and to the satisfaction of **H-GAC'S** Executive Director or his designee. **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this **Contract**, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

ARTICLE 19: GOVERNING LAW & VENUE

This **Contract** shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the **Contract** shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

ARTICLE 20: CONTRACTOR'S REPRESENTATIVE

CONTRACTOR'S representative(s) shall be the contact person(s) concerning all matters pertaining to **END USER** orders. Any change of representation shall be immediately communicated in written form to **H-GAC** by **CONTRACTOR**.

END USER will remit all payments to **CONTRACTOR** under this **Contract**. Under no circumstances shall checks be made payable to a representative. Should a representative submit invoices to **END USER** for reimbursement of costs relating to an **END USER Purchase Order** for products/services, the Invoice shall be forwarded to **CONTRACTOR**.

ARTICLE 21: REPORTING REQUIREMENTS

Upon request by **H-GAC**, **CONTRACTOR** shall provide monthly written reports to **H-GAC**. Such reports may include, but are not limited to the following: detailing of all orders received, scheduled production, and scheduled delivery under this contract.

If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any report or other documentation required by this **Contract**, or otherwise fails to satisfactorily render performances hereunder, such failure may be considered cause for termination of this **Contract**.

ARTICLE 22: MOST FAVORED CUSTOMER CLAUSE

If **MOTOROLA** at any time during a contract period, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products offered to **H-GAC** on a basis that provides prices more favorable than those provided to **H-GAC**, **MOTOROLA** shall within ten (10) business days thereafter notify **H-GAC** of that offering. The contract with **H-GAC** shall be deemed to be automatically amended and effective retroactively to the effective date of the most favorable contract, wherein **MOTOROLA** shall provide the same quantity discount to **H-GAC** and its End Users for equal or larger orders purchased the same quantity and under the same circumstances. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **MOTOROLA** believes any apparently more favorable price charged and/or offered a customer during the term of this agreement is not in fact most favored treatment, **MOTOROLA** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **MOTOROLA** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon the contract between **H-GAC** and **MOTOROLA** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices to **H-GAC**.

The most favored price structure set forth in this paragraph shall not apply to any pre-existing contracts Motorola has in the State of Texas. The term "*pre-existing contracts*" shall refer to contracts in existence as of the original effective date of the **HGAC** contract, i.e. 1/1/08.

The Parties agree that the above MFC provision shall not apply to the sale of large communications systems (one million dollars (\$1,000,000.00) and above). The term "*Communications System*" shall refer to a project that includes the sale of infrastructure hardware and/or software, user devices, and Motorola engineering and installation service. The contract for a "Communication System" will always have a Statement of Work and an Acceptance Test Plan.

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The Parties accept the following definition of routine. *A prescribed, detailed course of action to be followed regularly; a standard procedure.*

ARTICLE 23:

INDEMNIFICATION

The **CONTRACTOR** agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, the State of Texas, the United States Government and their respective board members, officers, agents, officials, and employees from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of and to the extent caused by the **CONTRACTOR'S** negligent acts or omissions under this Contract, the **CONTRACTOR'S** non-performance of this Contract, or the **CONTRACTOR'S** violation of any law, regulation or other standard incorporated herein. The **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against the **CONTRACTOR** relating to this Contract.

• **PRODUCT SPECIFIC ARTICLES 24-46** •

ARTICLES 24, 25 AND 26 ARE COMBINED TO READ AS FOLLOWS:

PROCEDURAL STEPS ENUMERATED FOR SALES TO END USERS

1. All Cooperative Purchasing business will be processed in accordance with **H-GAC's** policies and procedures, at contracted prices, and shall include approved order processing charges.
2. **END USER** will access the Cooperative Purchasing Program through the **H-GAC** website and /or by submission of any duly executed purchase order to a contractor having a valid contract with **H-GAC** and in a format acceptable to **H-GAC**.
3. **END USER** will submit order(s) electronically through **CONTRACTOR'S** on-line ordering process or issue Purchase Order(s) directly to **CONTRACTOR** at contract prices, and also submit a copy to **H-GAC**.
4. The **H-GAC CONTRACTOR** will deliver products/services as specified by the contract between **CONTRACTOR** and **H-GAC**, and invoice each **END USER** for (1) products/services purchased and (2) **H-GAC'S** applicable order processing charge.
5. Upon delivery, acceptance, and receipt of an **H-GAC CONTRACTOR's**, documented invoice, **END USER** shall pay the **H-GAC CONTRACTOR** the full amount of the invoice.
6. For orders of less than \$100,000, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case, not later than sixty (60) calendar days after End User order is processed. Payments will be processed to **H-GAC** on a monthly basis. For orders of \$100,000 or more, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case, not later than forty-five (45) calendar days after receipt of End User payment by **Motorola**.
7. Failure to promptly remit **H-GAC's** order processing charges may result in sanctions including, but not limited to, contract termination.
8. **CONTRACTOR** shall be responsible for delivery and acceptance of each unit by **END USER**, according to the requirements of the specifications, this Contract, and purchase order issued to **CONTRACTOR** by an **END USER**. All required equipment tests shall be borne by **CONTRACTOR**.
9. **CONTRACTOR** shall promptly provide **H-GAC** and **END USER** with all information pertaining to delivery schedules. **CONTRACTOR** shall also use its best efforts to expedite unit deliveries on shorter notice than set forth in its verification for any specific purchase order when requested.
10. All prices are F.O.B. **END USER'S** location with all transportation charges prepaid and included in any invoice.
11. All pricing shall be based on the current contract unless the **H-GAC CONTRACTOR** prior to receipt of **END USER's** purchase order for delivery of any products/services has received **H-GAC's** prior written approval for any price increases.
12. The **H-GAC CONTRACTOR** agrees to accept the terms of this agreement and to conduct all transactions based on pricing and other terms of the contract including, but not limited to, the applicable **H-GAC** order processing charge. The **CONTRACTOR** agrees to encourage **END USERS** to execute authorizing Interlocal contracts with **H-GAC**.

ARTICLE 27:

PRE-PAYMENTS AND DISCOUNTS

1. Progress and pre-payment discounts offered by **CONTRACTOR** shall be fully disclosed to **END USER** by **CONTRACTOR'S** representative and subsequently listed on the **END USER'S** purchase order to **CONTRACTOR**.

Discounts may be offered by **CONTRACTOR** based on similarly constructed products and quantity purchases. Discounts may be stated in either dollar amount or percentage and shall be applicable to **CONTRACTOR** defined number of similar units.

2. **CONTRACTOR** shall be the sole source of determination as to similar designation.

ARTICLE 28:

LIABILITY INSURANCE

CONTRACTOR shall maintain proof of liability insurance in minimum amounts listed below and shall provide proof of said insurance to **H-GAC** upon request.

General liability	\$1,000,000 per single occurrence
Product liability	\$1,000,000 per single occurrence

Insurance coverage shall be in effect for the length of the contract and any extensions thereof, plus the number of months or days required to deliver any outstanding order after the close of the contract. Contractor shall promptly notify **H-GAC** of cancellation or changes in insurance coverage during the contract period.

ARTICLE 29:

COMPLETION AND LIQUIDATED DAMAGES

(This Article does not apply to this Contract)

ARTICLE 30:

COMPLIANCE WITH PROPOSAL SPECIFICATIONS

The contract herein provides certain details emphasizing the intent of the proposal specifications:

Warranties:

CONTRACTOR'S standard equipment warranty, as revised 4-1-00, shall be made a part of this Contract, a copy of which shall be attached to this Document. **H-GAC** reserves the right to examine the language in this standard warranty and to accept or reject any changes made after this date. **H-GAC** shall hold the **CONTRACTOR** responsible for the execution and effectiveness of all product warranty. **H-GAC** shall look only to the **CONTRACTOR** as the sole source for solution to problems arising from warranty claims. The **CONTRACTOR** agrees to respond directly to correction of warranty claims and to ensure reconciliation of warranty claims which have been assigned to a third party.

Selection of Components:

The selection of quality components shall be determined by the **CONTRACTOR**. Since durability and warranty provisions are an inherent consideration in the selection process, **H-GAC** and the **END USERS** subject themselves to a trust relationship with the **CONTRACTOR** to deliver a product which will comply with standards set for the specified product detail in the proposal specifications.

Contractor's Default:

Should the contractor default in providing the equipment as specified in the specifications, and in this contract, recourse may be exercised through the performance bond or other legal remedies.

Delivery to End User:

CONTRACTOR shall schedule delivery to **END USER** sites in coordination with the relevant **END USER's** site.

Accessories and Options:

All accessories and options listed in the Option Table shall become part of this contract.

ARTICLE 31:

DOCUMENTATION

CONTRACTOR will provide **END USER** Agency complete operating manuals on all equipment ordered.

ARTICLE 32:

MANUFACTURER PRICE DECREASES/INCREASES

1. Except as provided in **ARTICLE 35**, No price increases shall be allowed during the first twelve (12) months of this Contract period.
2. Any request for a price change must be submitted to **H-GAC** on **CONTRACTOR'S** letterhead, must be signed by a corporate officer, and must be received by **H-GAC** at least forty five (45) calendar days prior to the requested effective

- date of the increase.
3. Price increase requests **MUST** be supported by documentation, acceptable to H-GAC, concerning CONTRACTOR'S actual cost increase.
 4. H-GAC reserves the right to accept or reject any price change request.

In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of this Contract, CONTRACTOR may request a price change based on the same conditions as stated above. However, the forty-five (45) day prior notice is waived and H-GAC will consider the request immediately on receipt.

ARTICLE 33: CONTRACTOR'S FIRMWARE/SOFTWARE

CONTRACTOR provides firmware/software only under license. END USER agencies will not own such firmware/software and will be authorized for its use only after proper completion of the CONTRACTOR'S Software Agreement Documentation except as CONTRACTOR agrees to sell the Source Code to the END USER.

ARTICLE 34: SYSTEM PURCHASE AGREEMENT

It is agreed that the scope of this Contract is limited to the procurement of equipment and services defined in Motorola's Proposal Response opened October 4, 2007 in response to the Proposal Specifications. It is further agreed that END USERS may use this Contract to purchase systems and/or services. In such event, a separate agreement, making reference to this Contract, may be negotiated between the CONTRACTOR, and the END USER. Said document shall be entitled, "*System Purchase Agreement*".

Using prices for products and services established in the Proposal Response opened October 4, 2007, each "*System Purchase Agreement*" shall define the associated costs for all such services. The "*System Purchase Agreement*" shall set forth all specific details of the negotiated agreement. It may include, but is not limited to the following: • division of responsibilities, • sites, • surface/subsurface conditions, • system design technical requirements, • performance and schedules, • coverage, • warranties, • installation and implementation, • list of deliverables, • Title and Risk of Loss, • FCC Licensing, • software licensing, • acceptance criteria, • payment terms, • documentation requirements, • changes, • customer delay, • termination for convenience/default, • limitation of liability, • training, • bonds, and • maintenance.

ARTICLE 35: SUBSTITUTIONS AND DEVIATIONS

H-GAC agrees to the substitution of Contractor's new published list prices to include new offerings. Along with the price book, Contractor will continue to provide a static discount structure to each part using published APC's (assigned product codes) consistent with current discounts. The new pricing, submitted in CD format, will be updated bi-monthly and provide a published sheet containing any changes within the CD format. Upon receipt of the CD, H-GAC will notify Contractor within five (5) business days if the price increases are not acceptable, or if H-GAC requires more information to make the determination.

ARTICLE 36: BLANKET PERFORMANCE BOND
(This Article does not apply to this Contract)

ARTICLE 37: PERFORMANCE BOND ISSUED TO END USER

Optional Performance Bonds may be purchased and issued to the relevant END USER for an amount equal to the value of each purchase order.

ARTICLE 38: INSPECTIONS BY H-GAC

CONTRACTOR agrees to provide access to H-GAC authorized personnel for inspection of facilities and audit of purchase orders during the Contract period and for a period extending to the completion of any and all equipment ordered under the terms of this contract. Site inspections shall be arranged not less than ten (10) calendar days before said inspections and shall state the name(s) of persons who will conduct the inspections. CONTRACTOR shall not incur expenses relating thereto.

ARTICLE 39: PROPOSAL PRICES OFFERED BY CONTRACTOR

The pricing listed in CONTRACTOR'S Proposal Response as stated on *Forms D through F* shall be applicable to all products ordered under the terms of this Contract. Additional discounts may be offered at the discretion and sole liability of the CONTRACTOR.

ARTICLE 40: CHANGE ORDER PROVISIONS

Texas statutes limit change orders to an amount not exceeding twenty-five (25%) of the proposal price. A decrease of like amount is also provided. For the purpose of H-GAC procedures, the proposal price includes the base proposal amount and all priced options submitted with the proposal response.

ARTICLE 41:

ORDER CANCELLATION

In the event **CONTRACTOR** is unable to deliver a product/service by the scheduled delivery date, and the delay is caused by factory production delays exceeding one hundred twenty (120) days from the delivery date set in the purchase order, said product/service shall be subject to possible cancellation by **END USER**.

CONTRACTOR shall notify **END USER** and **H-GAC** of any conditions of Force Majeure that might cause delay in delivery of products/services. [See Article 11: "Force Majeure"]

ARTICLE 42: ASSIGNMENT OR SUBLEASE OF RIGHTS

Neither party shall assign or sublease any rights under this contract without the written consent of the other party. [See Article: "Subcontracts"]

ARTICLE 43: CHANGE OF OWNERSHIP

The **CONTRACTOR** shall notify **H-GAC** of any material change in name, ownership or control. Such notification shall be supplied within ten (10) business days of such change.

ARTICLE 44: NON-COMPETITION CLAUSE

A **CONTRACTOR'S** published or unpublished options may not compete with another **CONTRACTOR'S** base proposal award.

ARTICLE 45: PRODUCER PRICE INDEX APPLIED TO CONTRACT EXTENSIONS

Consideration of any contract extension exceeding sixty-one (61) days beyond the stated expiration date of the original contract period, may be subject to possible increases/decreases in the original proposal prices offered by the **CONTRACTOR**. The price increases/decreases shall not exceed the Producer Price Index (PPI) for the latest available reporting period prior to expiration of the original contract.

The relevant product code, as defined by the criteria of the U. S. Department of Labor's latest reporting period, shall be used to determine the maximum price increase/decrease for the length of the contract extension. **H-GAC** shall establish the date of the latest available report in determining the rate of increase/decrease based on direct communication with the U. S. Department of Labor.

ARTICLE 46:


CONTRACT PERFORMANCE

CONTRACTOR must meet the following performance criteria at all times, and to **H-GAC's** complete satisfaction. Failure to do so may be considered to be non-compliant performance and may result in contract termination at **H-GAC's** sole discretion.

1. **CONTRACTOR** shall maintain sufficient qualified staff to process Purchase Orders, and to respond promptly by telephone, fax, and email.
2. **CONTRACTOR** shall participate in orientation and training as may be required by **H-GAC**.
3. **H-GAC** reserves the right to request that a new Sales Representative be assigned to the contract (Proposal Specifications, General Terms and Conditions).
4. **CONTRACTOR** shall provide toll free line(s) for access by **H-GAC's** End Users.
5. **Motorola** will use commercially reasonable efforts to encourage **H-GAC** End User Participants to purchase contracted items through the **H-GAC** Contract.
6. All Products/services sold and delivered will include all current manufacturer's standard features at no additional charge, and meet all **H-GAC** requirements and specifications in all respects.
7. Scheduled delivery dates will be met in all cases unless prevented by Force Majeure.

This contract, signed in two originals by both parties, shall become effective on the First day of January, 2008 and shall remain in effect for a period ending on the Thirty First day of December, 2009 at Midnight Central Time. The incorporated copies of Proposal Specifications numbered RA01-08 Terms and Conditions, and Proposaler's Response documents as identified in Article 1, shall become part of this contract.

Signed for **Houston Galveston**
Area Council
Houston, TX



Paul Steele, Executive Director

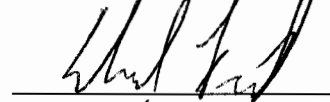
Attest for **Houston Galveston**
Area Council
Houston, TX



Deidre Vick, Director of Public Services

Date: Feb 13 2008

Signed for **Motorola, Inc.**
Farmers Branch, TX

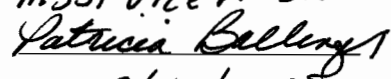


Edward Fuerst, MSS1 Vice President

Date: 2/12/2008

Printed Name & Title: Edward Fuerst
MSS1 Vice President

Attest for **Motorola, Inc.**
Farmers Branch, TX



Patricia Bellamy, Territory Administrator

Date: 2/12/2008

Printed Name & Title: Territory Administrator

002570 01 11 08 10:00 AM
08 FEB 13 11 51 12
2008

This warranty applies within the fifty (50) United States, the District of Columbia and Canada.

**LIMITED WARRANTY
MOTOROLA COMMUNICATION PRODUCTS**

If the affected product is being purchased pursuant to a written Communications System Agreement signed by Motorola, the warranty contained in that written agreement will apply. Otherwise, the following warranty applies.

I. WHAT THIS WARRANTY COVERS AND FOR HOW LONG:

Motorola Inc. or, if applicable, Motorola Canada Limited ("Motorola") warrants the Motorola manufactured radio communications product, including original equipment crystal devices and channel elements ("Product"), against material defects in material and workmanship under normal use and service for a period of One (1) Year from the date of shipment.

Motorola, at its option, will at no charge either repair the Product (with new or reconditioned parts), replace it with the same or equivalent Product (using new or reconditioned Product), or refund the purchase price of the Product during the warranty period provided purchaser notifies Motorola according to the terms of this warranty. Repaired or replaced Product is warranted for the balance of the original applicable warranty period. All replaced parts of the Product shall become the property of Motorola.

This express limited warranty is extended by Motorola to the original end user purchaser purchasing the Product for purposes of leasing or for commercial, industrial, or governmental use only, and is not assignable or transferable to any other party. This is the complete warranty for the Product manufactured by Motorola. Motorola assumes no obligations or liability for additions or modifications to this warranty unless made in writing and signed by an officer of Motorola. Unless made in a separate written agreement between Motorola and the original end user purchaser, Motorola does not warrant the installation, maintenance or service of the Product.

Motorola cannot be responsible in any way for any ancillary equipment not furnished by Motorola which is attached to or used in connection with the Product, or for operation of the Product with any ancillary equipment, and all such equipment is expressly excluded from this warranty. Because each system which may use the Product is unique, Motorola disclaims liability for range, coverage, or operation of the system as a whole under this warranty.

II. GENERAL PROVISIONS:

This warranty sets forth the full extent of Motorola's responsibilities regarding the Product. Repair, replacement or refund of the purchase price, at Motorola's option, is the exclusive remedy. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESS WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL MOTOROLA BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT, FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL, SPECIAL,

INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH PRODUCT, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

III. HOW TO GET WARRANTY SERVICE:

Purchaser must notify Motorola's representative or call Motorola's Customer Response Center at 1-800-247-2346 within the applicable warranty period for information regarding warranty service.

IV. WHAT THIS WARRANTY DOES NOT COVER:

- A) Defects or damage resulting from use of the Product in other than its normal and customary manner.
- B) Defects or damage from misuse, accident, water, or neglect.
- C) Defects or damage from improper testing, operation, maintenance, installation, alteration, modification, or adjustment.
- D) Breakage or damage to antennas unless caused directly by defects in material workmanship.
- E) A Product subjected to unauthorized Product modifications, disassemblies or repairs (including, without limitation, the addition to the Product of non-Motorola supplied equipment) which adversely affect performance of the Product or interfere with Motorola's normal warranty inspection and testing of the Product to verify any warranty claim.
- F) Product which has had the serial number removed or made illegible.
- G) Batteries (they carry their own separate limited warranty).
- H) Freight costs to the repair depot.
- I) A Product which, due to illegal or unauthorized alteration of the software/firmware in the Product, does not function in accordance with Motorola's published specifications or with the FCC type acceptance labeling in effect for the Product at the time the Product was initially distributed from Motorola.
- J) Scratches or other cosmetic damage to Product surfaces that does not affect the operation of the Product.
- K) That the software in the Product will meet the purchaser's requirements or that the operation of the software will be uninterrupted or error-free.
- L) Normal and customary wear and tear.
- M) Non-Motorola manufactured equipment unless bearing a Motorola Part Number in the form of an alpha numeric number (i.e., TDE6030B).

V. GOVERNING LAW

In the case of a Product sold in the United States and Canada, this Warranty is governed by the laws of the State of Illinois and the Province of Ontario, respectively.

VI. PATENT AND SOFTWARE PROVISIONS:

Motorola will defend, at its own expense, any suit brought against the end user purchaser to the extent that it is based on a claim that the Product or its parts infringe a United States patent, and Motorola will pay those costs and damages finally awarded against the end user purchaser in any such suit which are attributable to any such claim, but such defense and payments are conditioned on the following:

- A) that Motorola will be notified promptly in writing by such purchaser of any notice of such claim;
- B) that Motorola will have sole control of the defense of such suit and all negotiations for its settlement or compromise; and
- C) should the Product or its parts become, or in Motorola's opinion be likely to become, the subject of a claim of infringement of a United States patent, that such purchaser will permit Motorola, at its option and expense, either to procure for such purchaser the right to continue using the Product or its parts or to replace or modify the same so that it becomes non-infringing or to grant such purchaser a credit for the Product or its parts as depreciated and accept its return. The depreciation will be an equal amount per year over the lifetime of the Product or its parts as established by Motorola.

Motorola will have no liability with respect to any claim of patent infringement which is based upon the combination of the Product or its parts furnished hereunder with software, apparatus or devices not furnished by Motorola, nor will Motorola have any liability for the use of ancillary equipment or software not furnished by Motorola which is attached to or used in connection with the Product. The foregoing states the entire liability of Motorola with respect to infringement of patents by the Product or any its parts thereof.

Laws in the United States and other countries preserve for Motorola certain exclusive rights for copyrighted Motorola software such as the exclusive rights to reproduce in copies and distribute copies of such Motorola software. Motorola software may be used in only the Product in which the software was originally embodied and such software in such Product may not be replaced, copied, distributed, modified in any way, or used to produce any derivative thereof. No other use including, without limitation, alteration, modification, reproduction, distribution, or reverse engineering of such Motorola software or exercise of rights in such Motorola software is permitted. No license is granted by implication, estoppel or otherwise under Motorola patent rights or copyrights.

**Attachment A
MOTOROLA, INC.**

**Radio Communication/Emergency Response & Mobile Interoperable Equipment
Contract No.: RA01-08**

Product Code	Manufacturer	Description	Base Offered Price
A&B			
Per the RFP Motorola has included an Electronics Catalogue (ECAT), April 2007 Edition, on a CD media in lieu of listing each individual product and its options. In addition, the discount APC (Accounting Product Code) sheet detailed below is to be used to calculate all individual prices within the ECAT disk.			
D	Service	Motorola Integration Services	
D		Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.	
D		Project Management Daily Rate*	\$1,500
D		System Engineering Daily Rate*	\$1,500
D		System Technologist Daily Rate*	\$1,800
D		Standard Shop Installation: Hourly Rate*	\$125
D		Standard Shop Installation: Daily Rate*	\$850
D		Mobile Radio Installation*	\$150- \$350
D		Radio Programming*	\$45-\$100
D		Data Installation*	\$150-\$350
D		*Prices may vary by Region and Stated Scope. Travel Not Included	

APC DISCOUNTS PER ECAT PRICEBOOK		
APC'S	ECAT Category	% Discount
153	Data Applications	15%
297	Data Applications	0%
333	Data Applications	0%
339	Data Applications	0%
879	Data Applications	0%
87	Data Subscriber Devices	0%
137	Data Subscriber Devices	5%
170	Data Subscriber Devices	5%
171	Data Subscriber Devices	10%
225	Data Subscriber Devices	10%
312	Data Subscriber Devices	20%
343	Data Subscriber Devices	22%
508	Data Subscriber Devices	10%
708	Data Subscriber Devices	10%

736	Data Subscriber Devices	22%
855	Data Subscriber Devices	10%
214	Fixed Data Products	10%
275	Fixed Data Products	10%
224	Fixed Data Products	10%
403	Fixed Data Products	10%
469	Fixed Data Products	10%
499	Fixed Data Products	10%
222	Fixed Network Equipment	0%
381	Fixed Network Equipment	5%
403	Fixed Network Equipment	10%
218	Fixed Stations	20%
281	Fixed Stations	18.50%
301	Fixed Stations	20%
360	Fixed Stations	15%
448	Fixed Stations	20%
509	Fixed Stations	20%
512	Fixed Stations	23%
537	Fixed Stations	20%
590	Fixed Stations	20%
595	Fixed Stations	15%
675	Fixed Stations	20%
676	Fixed Stations	20%
680	Fixed Stations	20%
780	Fixed Stations	0%
793	Fixed Stations	10%
207	Fixed Station Accessories	10%
273	Fixed Station Accessories	10%
277	Fixed Station Accessories	20%
301	Fixed Station Accessories	20%
524	Fixed Station Accessories	15%
525	Fixed Station Accessories	15%
687	Fixed Station Accessories	18%
207	Fixed Station Antenna Systems	10%
118	Fixed Station Controls	15%

124	Fixed Station Controls	15%
129	Fixed Station Controls	20%
202	Fixed Station Controls	15%
207	Fixed Station Controls	10%
228	Fixed Station Controls	30%
229	Fixed Station Controls	5%
261	Fixed Station Controls	5%
322	Fixed Station Controls	15%
377	Fixed Station Controls	10%
404	Fixed Station Controls	20%
443	Fixed Station Controls	18.50%
448	Fixed Station Controls	20%
454	Fixed Station Controls	15%
708	Fixed Station Controls	10%
729	Fixed Station Controls	0%
740	Fixed Station Controls	10%
291	Mobile Accessories	15%
554	Mobile Accessories	15%
644	Mobile Accessories	15%
103	Mobile Stations	20%
109	Mobile Stations	15%
185	Mobile Stations	0%
189	Mobile Stations	15%
276	Mobile Stations	18.50%
287	Mobile Stations	10.00%
374	Mobile Stations	15%
412	Mobile Stations	10%
500	Mobile Stations	20%
514	Mobile Stations	18%
518	Mobile Stations	18%
672	Mobile Stations	20%
775	Mobile Stations	15%
776	Mobile Stations	20%
792	Mobile Stations	0%
869	Mobile Stations	20%
131	Network Products	10%
147	Network Products	10%

207	Network Products	10%
136	Pager/Receiver	10%
169	Pagers	10%
15	Portable Radiophone (Portables)	15%
177	Portable Radiophone (Portables)	15%
185	Portable Radiophone (Portables)	0%
205	Portable Radiophone (Portables)	25%
276	Portable Radiophone (Portables)	18.50%
320	Portable Radiophone (Portables)	20%
355	Portable Radiophone (Portables)	0%
407	Portable Radiophone (Portables)	25%
453	Portable Radiophone (Portables)	20%
476	Portable Radiophone (Portables)	20%
672	Portable Radiophone (Portables)	20%
687	Portable Radiophone (Portables)	18%
721	Portable Radiophone (Portables)	20%
749	Portable Radiophone (Portables)	15%
841	Portable Radiophone (Portables)	15%
232	Radioware Solutions	20%
129	Radius Products	20%
159	Radius Products	20%
169	Radius Products	20%
185	Radius Products	0%
262	Radius Products	20%
271	Radius Products	20%
291	Radius Products	20%

362	Radius Products	20%
372	Radius Products	20%
417	Radius Products	20%
433	Radius Products	20%
456	Radius Products	20%
457	Radius Products	20%
459	Radius Products	20%
476	Radius Products	20%
515	Radius Products	20%
547	Radius Products	20%
554	Radius Products	20%
555	Radius Products	20%
577	Radius Products	20%
644	Radius Products	20%
682	Radius Products	20%
706	Radius Products	20%
742	Radius Products	20%
744	Radius Products	20%
780	Radius Products	20%
785	Radius Products	20%
793	Radius Products	20%
795	Radius Products	20%
136	Receivers	10%
509	Receivers	20%
512	Receivers	23%
743	Receivers	15%
137	Secure Solutions	5%
201	Secure Solutions	5%
229	Secure Solutions	5%
424	Secure Solutions	15%
443	Secure Solutions	15%
462	Secure Solutions	5%
524	Secure Solutions	15%
525	Secure Solutions	15%
195	Software Upgrades/Flashport	0%
371	Software Upgrades/Flashport	0%
430	Software Upgrades/Flashport	20%
647	Software Upgrades/Flashport	0%
729	Software Upgrades/Flashport	0%
823	Software Upgrades/Flashport	0%
39	Trunking Products and Systems	10%
40	Trunking Products and Systems	15%

41	Trunking Products and Systems	10%
85	Trunking Products and Systems	15%
112	Trunking Products and Systems	15%
115	Trunking Products and Systems	10%
152	Trunking Products and Systems	5%
277	Trunking Products and Systems	20%
280	Trunking Products and Systems	18.50%
281	Trunking Products and Systems	18.50%
377	Trunking Products and Systems	10%
495	Trunking Products and Systems	15%
593	Trunking Products and Systems	23%
647	Trunking Products and Systems	0%
708	Trunking Products and Systems	10%
877	Trunking Products and Systems	18.50%
37	Wireless Mobility	5%
38	Wireless Mobility	5%
484	Wireless Mobility	5%
563	Wireless Mobility	5%
606	Wireless Mobility	15%
683	Wireless Mobility	15%
832	Wireless Mobility	10%
977	Wireless Mobility	5%

SYSTEM PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered into this ____ day of _____, ____by and between Motorola Inc., a Delaware corporation duly authorized to conduct business in the State of Texas ("Motorola" or "Seller"), the Houston-Galveston Area Council, a body corporate and politic ("H-GAC") and _____, a body corporate and politic ("Purchaser").

WITNESSETH:

WHEREAS, the Purchaser desires to purchase a Communications System; and

WHEREAS, Motorola desires to sell a Communications System to Purchaser; and

WHEREAS, H-GAC, acting as the agent for various local governmental entities who are "End Users" under interlocal agreements (including the Purchaser) has solicited quotations for radio communications equipment and conducted discussions with Motorola concerning its proposal and, where applicable, in accordance with the competitive procurement procedures of Texas law; and

WHEREAS, H-GAC and Motorola entered into that certain Radio Communications Equipment & Systems Agreement dated as of January 1, 2008 (the "Contract"), which provided that End Users may purchase radio communications equipment from Motorola pursuant to certain terms contained therein; and

WHEREAS, pursuant to Article 34 of the Contract, Purchaser, Motorola and Purchaser now wish to enter into this System Purchase Agreement to delineate the specific terms of the purchase of radio communications equipment from Motorola by the Purchaser.

THEREFORE, the parties hereby enter into an agreement pursuant to which Motorola shall perform the work and furnish the equipment and services as more fully set forth herein and in the following exhibits, which are either attached hereto or incorporated by reference and hereby made a part of this Agreement:

- Exhibit A General Provisions.
- Exhibit B Motorola Software License.
- Exhibit C Motorola's Statement of Work, System Description, Acceptance Test Plan, and Equipment List all dated _____.
- Exhibit D Motorola/H-GAC Radio Communications Equipment & Systems Agreement dated January 1, 2008.
- Exhibit E Motorola Enhanced System Support Statement of Work ("ESS Plan")

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

Section 1 SCOPE OF WORK

A. Motorola shall furnish all of the equipment as outlined in Exhibit C and provide the tools, supplies, labor and supervision necessary for the installation of the items purchased in accordance with Exhibit C.

B. In addition to responsibilities described in the Statement of Work, Purchaser shall perform the following coincident with the performance of this Agreement:

- (1) Provide a designated Project Director.
- (2) Provide ingress and egress to Purchaser's facilities and/or sites as requested by Motorola and have such facilities available for installation of the equipment to be installed.
- (3) Provide adequate telephone lines (including modem access and adequate interfacing networking capabilities) for the installation and operation of the equipment.
- (4) Provide adequate AC Power at 117 VAC + 10%, 60 Hz for the installation and operation of the equipment.
- (5) Provide a designated work area with adequate heat and light, and a secure storage area for equipment delivered to the Purchaser. The Purchaser shall be solely liable for loss or damage to equipment prior to, during and following installation when such equipment is on or within Purchaser's facilities and/or vehicles.

Section 2 SITES

This Agreement is predicated on the utilization of sites and site configurations, which have been selected either by the Purchaser or by Motorola as contained in the Motorola proposal. In either situation, should it be determined by either Motorola or Purchaser during the course of performance on this Agreement that the sites or configuration selected are no longer available or desired, new or replacement sites or configuration will be selected and approved by both Motorola and the Purchaser. If any price adjustments are necessary as a result of these new or replacement sites, such price adjustments will be added to this Agreement by change order in accordance with Section 4 of the General Provisions.

Section 3 SUBSURFACE/STRUCTURAL CONDITIONS

This Agreement and the Motorola proposal are predicated upon normal soil conditions defined by E.I.A. standard RS-222 (latest revision). Should Motorola encounter subsurface, structural, and/or latent conditions at any site differing from those, indicated on the specifications, or as used in the preparation of the bid price, the Purchaser will be given immediate notice of such conditions before they are further disturbed. Thereupon, Motorola and the Purchaser shall promptly investigate the conditions and, if found to be different, will adjust the plans and/or specifications as may be necessary. Any changes that cause an adjustment in the contract price or in time required for the performance of any part of the contract shall result in a contract modification in accordance with Section 4 of the General Provisions.

Section 4 PERIOD OF PERFORMANCE

A. Motorola projects that it will be able to obtain final acceptance and completion of the Acceptance Test Plan within _____ days after the contract is signed by all parties. A more detailed timeline shall be provided to Purchaser after the design review and customer kick-off meeting.

B. Whenever Motorola knows or reasonably should know that any actual or potential condition due to circumstances beyond its control is delaying or threatens to delay the timely performance of the work, Motorola shall within thirty (30) days give Purchaser notice thereof and may request an extension of time to perform the work.

C. In order to successfully integrate and implement this project, shipments will be made F.O.B. Destination to Purchaser facilities, local Motorola staging facilities, warehousing facilities, or any combination thereof. It is agreed that this plan is acceptable to Purchaser and that Motorola will advise prior to shipment of actual destination and that purchaser will accept shipment, and make payment as required by this Agreement.

D. It is also agreed that equipment shipping dates reflected in this agreement or in Motorola proposals are estimates only, and that shipment may be made at any time prior to, or subsequent to these estimated shipping dates.

Section 5 ACCEPTANCE CRITERIA

A. Motorola will test the Communications System in accordance with the Acceptance Test Plan. System acceptance will occur upon the successful completion of such testing ("System Acceptance") at which time both parties shall promptly execute a certificate of system acceptance. If the Acceptance Test Plan includes separate tests for individual subsystems, both parties shall promptly execute certificates of subsystem acceptance upon the successful completion of testing of such subsystems. Minor omissions or variances in performance which do not materially affect the operation of the Communications System as a whole will not postpone System Acceptance. Purchaser and Motorola will jointly prepare a list of such omissions and variances which Motorola will correct according to an agreed upon schedule.

B. Motorola agrees to notify Purchaser when the Communications System is ready for acceptance testing. Motorola and Purchaser agree to commence acceptance testing within ten (10) business days after receiving such notification. If testing is delayed for reasons within the control of Purchaser or its employees, contractors, agents or consultants for more than ten (10) business days after notification, final payment will be due within thirty (30) days after such notification and the Warranty Period will commence immediately.

C. Motorola may, but is not obligated to, issue written authorization for Purchaser to use the Communications System or its subsystem(s) for limited training or testing purposes, prior to the completion of testing by Motorola. Any use of the Communications System without prior written authorization by Motorola shall constitute System Acceptance.

Section 6 PAYMENT SCHEDULE

A. Motorola agrees to sell all of the equipment and perform the services as outlined in the Scope of Work, and Purchaser agrees to buy the aforementioned equipment and services for the sum of _____ (\$_____), including the H-GAC administration fee of \$_____. The final price may be adjusted by change orders approved pursuant to Statement of Work attached hereto as Exhibit "C".

B. Payments to Motorola shall be made according to the following milestones:

1. 20% of the total contract price is due when Purchaser executes this Agreement;
2. 60% of the total contract price will be invoiced immediately after the Equipment is shipped from Motorola's facilities;
3. 10% of the total contract price will be invoiced immediately after the Equipment is installed at the sites specified in the Exhibits; and
4. 10% of the total contract price will be invoiced immediately after System Acceptance.

C. In the event of failure or delay by the Purchaser in providing sites, space, approvals, licenses, or any other Purchaser obligations required preceding delivery of Motorola equipment, it is agreed that Motorola, at its sole discretion, may ship equipment as planned and that the Purchaser will accept the equipment and make payment in accordance with the terms of this Agreement. Any additional costs incurred by Motorola for storage of equipment will be invoiced and paid by Purchaser.

D. Payments to Motorola shall be made as follows:

- (i) Motorola will post the delivery date into HGACbuy.com.
- (ii) Motorola shall immediately forward an invoice for the payment requested in Section 6(B) above to Purchaser.
- (iii) Purchaser shall pay the Motorola invoice within thirty (30) calendar days of receipt.

E. Payment of H-GAC's administrative fee:

Motorola will pay H-GAC in accordance with the payment terms of Contract No. RA01-08.

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

Section 7 PROJECT MANAGEMENT

A. If the size or complexity of the project warrants, Motorola will assign a Project Manager, who is authorized to exercise technical direction of this project. Motorola, at any time, may designate a new or alternate Project Manager with written notice to Purchaser and H-GAC.

B. All matters affecting the terms of this Agreement or the administration thereof shall be referred to Motorola's cognizant Contract Administrator who shall have authority to negotiate changes in or amendments to this Agreement.

Section 8 NOTICE ADDRESSES

A. Motorola, Inc.
6450 Sequence Drive
San Diego, Ca 92121
Attn.: Law Department

B.

C. Houston-Galveston Area Council
3555 Timmons Lane, Suite 500
Houston, Texas 77027
Attn.: Public Services Manager

Section 9 ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved in the following order:

Exhibit A General Provisions.

Exhibit B Motorola Software License.

Exhibit C Motorola's Statement of Work, System Description, Acceptance Test Plan and Equipment List.

Exhibit E Motorola Enhanced System Support Statement of Work ("ESS Plan")

Exhibit D Motorola/H-GAC Radio Communications Equipment & Systems Agreement dated January 1, 2008.

Section 10 DISPUTES

Motorola and the Purchaser will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by Motorola and the Purchaser within thirty (30) days after written notice by one of the parties demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator, and Motorola and the Purchaser will share the cost of the mediation

equally. By mutual agreement, however, Motorola and Purchaser may postpone mediation until both parties have completed some specified but limited discovery about the dispute. The parties may also agree to replace mediation with some other form of non-binding alternate dispute resolution procedure ("ADR").

Any dispute which cannot be resolved between the parties through negotiation or mediation within two (2) months of the date of the initial demand for it by one of the parties may then be submitted to a court of competent jurisdiction in Texas. Both Motorola and Purchaser consent to jurisdiction over it by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or others.

Section 11 SEVERABILITY

If any portion of this Agreement or any exhibits hereto is held to be invalid, such provision or portion of such provision shall be considered severable, and the remainder of this Agreement shall not be affected.

Section 12 HEADINGS AND SECTION REFERENCES

The headings given to the paragraphs are inserted for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular paragraph to which the heading refers.

Section 13 FULL AGREEMENT

This Agreement and its Exhibits constitute the final expression of the agreement of the parties and supersedes all previous agreements and understandings, whether written or oral, relating to the work. This Agreement may not be altered, amended, or modified except by written instrument signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the last day and year written below.

MOTOROLA, INC.

PURCHASER

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print - Block Letters)

Name: _____
(Print - Block Letters)

Title: _____
(Print - Block Letters)

Title: _____
(Print - Block Letters)

Date: _____

Date: _____

**EXHIBIT A
GENERAL PROVISIONS
MOTOROLA, INC.**

Section 1 STANDARDS OF WORK

Motorola agrees that the performance of work described in this Agreement and pursuant to this Agreement shall be done in a professional manner and shall conform to professional standards. All packaging and packing shall be in accordance with good commercial practice.

Section 2 TAXES

The prices set forth in the Agreement are exclusive of any amount for Federal, State or Local excise, sales, lease, gross income service, rental, use, property, occupation or similar taxes. If any taxes are determined applicable to this transaction or Motorola is required to pay or bear the burden thereof, the Purchaser agrees to pay to Motorola the amount of such taxes and any interest or penalty thereon no later than thirty (30) days after receipt of an invoice therefor.

Section 3 SHIPPING, TITLE AND RISK OF LOSS

All sales and deliveries are F.O.B. Destination. Motorola reserves the right to make deliveries in installments and the Agreement shall be severable as to such installments. Title to the equipment shall pass to the Purchaser upon receipt at the F.O.B. Destination. After delivery to the F.O.B. Destination, risk of loss and damage to the articles shall be borne by the Purchaser. The above notwithstanding, title to software and any third party supplied software shall not pass upon payment of the license fee therefor or under any circumstances.

Section 4 CHANGES IN THE WORK

A. The Purchaser may, at any time, by written order, make changes within the general scope of the work, including but not limited to revisions of, or additions to, portions of the work, or changes in method of shipment or packaging and place of delivery.

B. If any order under this Section 4 causes an increase or decrease in the cost of or time required for the performance of any part of the work under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Motorola is not obligated to comply with any order hereunder unless and until the parties reach agreement as to the aforementioned equitable adjustment and same is reflected as an addendum to this Agreement.

Section 5 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability whether for breach of contract, warranty, negligence, indemnification, strict liability in tort or otherwise, is limited to the price of the particular products or services sold hereunder with respect to which losses or damages are claimed. Purchaser's sole remedy is to request Motorola at Motorola's option to either refund the purchase price, repair or replace product(s) that are not as warranted. IN NO EVENT WILL MOTOROLA BE LIABLE FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW. No action shall be brought for any breach of this contract more than one (1) year after the accrual of such cause of action except for money due upon an open account.

Section 6 EXCUSABLE DELAYS

A. Neither Motorola nor the Purchaser shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but are not be limited to, acts of God; fire; strikes; material shortages; compliance with laws or regulations; riots; acts of war; or any other conditions beyond the reasonable control of the party or parties.

B. Delays as identified herein may cause an impact on the Period of Performance stated in the Agreement. Such delays will be subject to an Agreement addendum as described in Section 4.

Section 7 DEFAULT

A. If Motorola is wholly responsible for failure to make delivery or complete installation under the Agreement, the Purchaser may consider Motorola to be in default, unless such failure has been caused by the conditions set forth in Section 6 of these General Provisions.

B. The Purchaser shall give Motorola written notice of such default and Motorola shall have thirty (30) days to provide a plan of action to cure the default. If Motorola fails to cure the default, the Purchaser may terminate any unfulfilled portion of this Agreement or complete the system through a third party. In the event the Purchaser completes the system through a third party, Motorola shall be responsible for an amount in excess of the Agreement price, not to exceed the value of the terminated portion, incurred by the Purchaser in completing the system to a capability not exceeding that specified in the Agreement. IN THE EVENT OF DEFAULT, MOTOROLA SHALL NOT BE LIABLE FOR ANY INCIDENTAL, LIQUIDATED, SPECIAL OR CONSEQUENTIAL DAMAGES.

Section 8 DELAYS BY PURCHASER

If the Purchaser is responsible for delays which cause the installation and acceptance of this system, to be rescheduled beyond the Period of Performance set forth in the Agreement, the Purchaser shall be liable for actual costs incurred by Motorola resulting from these delays. Such charges may include, but are not limited to, additional Engineering; rescheduling charges; storage charges; maintenance charges; and transportation charges. The Purchaser shall have the option to attempt to minimize actual costs incurred by storing and transporting equipment at its own expense.

Section 9 LICENSES/AUTHORIZATION

The Purchaser is solely responsible for obtaining any licenses or other authorizations required by the Federal Communications Commission and for complying with FCC rules. Neither Motorola nor any of its employees is an agent or representative of the Purchaser in FCC matters or otherwise. Motorola, however, may assist in the preparation of the license application at no charge to the Purchaser. Purchaser acknowledges that project implementation is predicated on receipt of proper FCC licensing.

Section 10 INDEMNIFICATION

Motorola agrees to and hereby indemnifies and saves Purchaser and/or H-GAC harmless from all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from the Purchaser and/or H-GAC by reason of or on account of damage to the tangible property of the Purchaser or the property of, injury to, or death of any person, to the extent and in the proportion that such damage or injury is caused by Motorola's negligent acts or omissions or that of its employees, subcontractors, or agents while on the premises of the Purchaser during the delivery and installation of the communications equipment. **IN NO EVENT WILL MOTOROLA BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.**

Section 11 EQUIPMENT COMPATIBILITY; PRODUCT SUPPORT

Motorola agrees that the equipment, will perform in accordance with the specifications and representations stated in Motorola's Proposal and Equipment List included in this Agreement. This Agreement does not extend to the performance of the equipment as a part of a larger system generally nor specifically to equipment in combination with products, elements or components not supplied by Motorola.

Motorola will use 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, both from the date of last manufacture. Motorola reserves the right to supply either assemblies or piece parts.

Section 12 WARRANTIES

A. **WARRANTY PERIOD.** Upon System Acceptance, the System Functionality representation described below is fulfilled. The Equipment and Motorola Software is warranted for a period of one (1) year after System Acceptance ("Warranty Period") in accordance with the applicable limited warranties shown below. In no event will the warranty period last longer than eighteen (18) months after the Equipment and Software is shipped from Motorola. Purchaser must notify Motorola in writing if Equipment or Motorola Software does not conform to these warranties no later than one month after the expiration of the Warranty Period.

B. **SYSTEM FUNCTIONALITY.** Motorola represents that the Communications System will satisfy the functional requirements in Exhibit C. Upon System Acceptance, this System Functionality representation is fulfilled. After System Acceptance, the Equipment Warranty set forth below, the Software Warranty set forth in the Software License Agreement, and the ESS Plan will apply.

Motorola will not be responsible for performance deficiencies of the System caused by ancillary equipment not furnished by Motorola attached to or used in connection with the System provided hereunder. Additionally, Motorola will not be responsible for System performance when the functionality is reduced for reasons beyond Motorola's control including, but not limited to, i) an earthquake, adverse atmospheric conditions or other natural causes; ii) the construction of a building that adversely affects the microwave path reliability or RF coverage; iii) the addition of additional frequencies at System sites that cause RF interference or intermodulation; iv) Purchaser changes to load usage and/or configuration outside the parameters specified in Exhibit C; v) any other act of parties who are beyond Motorola's control, including Purchaser or its employees, contractors, consultants or agents.

C. **EQUIPMENT WARRANTY.** Motorola warrants the Equipment against material defects in material and workmanship under normal use and service during the Warranty Period. Unless otherwise specified in writing, the Warranty Period for non-Motorola manufactured Equipment will be as stated in this Section. At no additional charge and at its option, Motorola will either repair the defective Equipment, replace it with the same or equivalent Equipment, or refund the purchase price of the defective Equipment, and such action on the part of Motorola will be the full extent of Motorola's liability hereunder. Repaired or replaced Equipment is warranted for the balance of the original applicable warranty period. All replaced parts of the Equipment shall become the property of Motorola.

THIS WARRANTY DOES NOT APPLY TO

- a) Defects or damage resulting from use of the Equipment in other than its normal and customary manner.
- b) Defects or damage occurring from misuse, accident, water or neglect.

- c) Defects or damage occurring from testing, maintenance, installation, alteration, modification, or adjustment not provided by Motorola pursuant to this Communications System Agreement.
- d) Breakage of or damage to antennas unless caused directly by defects in material or workmanship.
- e) Equipment that has been subjected to unauthorized modifications, disassembly or repairs (including the addition to the Equipment of non-Motorola supplied equipment if not authorized by Motorola) which adversely affect performance of the Equipment or interfere with Motorola's normal warranty inspection and testing of the Equipment to verify any warranty claim.
- f) Equipment that has had the serial number removed or made illegible.
- g) Batteries (because they carry their own separate limited warranty).
- h) Freight costs to the repair depot.
- i) Equipment that has been subject to illegal or unauthorized alteration of the software/firmware in the Equipment.
- j) Scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment.
- k) Software.
- l) Normal or customary wear and tear.

D. Motorola Software Warranty. Motorola Software is warranted in accordance with the terms of the Software License Agreement attached as Exhibit B.

E. These express limited warranties as set forth in this Section are extended by Motorola to the original end user purchasing or leasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable. These are the complete warranties for the Equipment and Software provided pursuant to this Agreement.

F. THESE WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL MOTOROLA BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE EQUIPMENT. IN NO EVENT WILL MOTOROLA BE LIABLE FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES

ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

Section 13 CONFIDENTIAL INFORMATION

Motorola proprietary computer programs will be released in accordance with the Software License provisions set forth elsewhere, if applicable. All other material and information of confidential nature marked Motorola PROPRIETARY and CONFIDENTIAL will be released as necessary under the following conditions:

- (1) Purchaser shall exercise reasonable and prudent measures to keep these items in confidence.
- (2) Purchaser shall not disclose these items to third parties without prior written permission, unless Motorola makes them public or Purchaser learns them rightfully from sources independent of Motorola, or it is required by law to be disclosed.
- (3) Motorola, where necessary, retains the right to prescribe specific security measures for the Purchaser to follow to maintain the confidentiality.

In the event disclosure of such information is necessary, a separate Non-Disclosure Agreement will be required.

Section 14 SOFTWARE LICENSE

A. Motorola Software. Any Motorola Software furnished will be licensed to Purchaser solely according to the terms and restrictions of the Software License Agreement attached as Exhibit B. Purchaser hereby accepts all of the terms and restrictions of the Software License Agreement.

B. Non-Motorola Software. Any Non-Motorola Software furnished by Motorola will be subject to the terms and restrictions of its copyright owner unless such copyright owner has granted to Motorola the right to sublicense such Non-Motorola Software, in which case the Software License Agreement (including any addendum to satisfy such copyright owner's requirements) shall apply.

Section 15 PATENT INDEMNIFICATION

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

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 or indemnify for any Infringement Claim that is based upon the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; any Equipment that is not Motorola's design or formula; a modification of the Motorola Software by a party other than Motorola; or the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment, Motorola Software, or any of their parts.

Section 16 DISCLAIMER OF PATENT LICENSE

Nothing contained in this Agreement shall be deemed to grant, either directly or by implication, estoppel, or otherwise, any license under any patents or patent applications of Motorola, except that Purchaser shall have the normal non-exclusive royalty-free license to use that is implied, or otherwise arises by operation of law, in the sale of a product.

Section 17 WAIVER

Failure or delay on the part of Motorola or Purchaser to exercise right or power hereunder shall not operate as a waiver thereof.

Section 18 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

Section 19 ASSIGNABILITY

The Agreement may not be assigned by any party hereto other than Motorola may assign this order to one of its Subsidiaries as in the normal course of business.

Exhibit B

Software License Agreement

This Exhibit B, Software License Agreement ("Agreement") is between Motorola, Inc., ("Motorola"), and _____ ("Licensee").

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

Section 1 DEFINITIONS

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

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

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

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

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

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

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

Section 2 SCOPE

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

Section 3 GRANT OF LICENSE

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

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

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

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

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto only 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.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. 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's Information Assurance Policy addresses the issue of 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
Technical and Implementation Documents

Exhibit D

Motorola/H-GAC Radio Communications Equipment & Systems Agreement

Exhibit E

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