

34-3

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:** December 16, 2008

☒ **Consent** ☐ **Regular**

☐ **Workshop** ☐ **Public Hearing**

**Department:** Facilities Development & Operations

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to: **A) Approve** Agreement with Motorola Inc. for reconfiguration services required to modify the 800 MHz System to comply with Federal Communication Commission's Rebanding Report & Order; and

**B) Authorize** the County Administrator or his designee to execute all documents required to administer this Agreement including any change orders which do not have any fiscal impact to the County.

**Summary:** In 2004, the Federal Communications Commission issued an Order that modified its rules governing the 800 MHz band requiring reconfiguration to minimize harmful interference to public safety radio communication systems. The County and Nextel are both licensed on frequency allocations subject to reconfiguration pursuant to a separate Frequency Reconfiguration Agreement (FRA). This Agreement provides the terms and conditions under which Motorola will reconfigure the County's 800 MHz radio system frequencies and implements the rebanding contemplated by the FRA. Pursuant to the terms of this Agreement as well as the FRA, Motorola's costs will be directly reimbursed by Nextel. **(FDO/ESS) Countywide (MJ)**

**Background and Justification:** On August 15, 2006 the County entered into a Frequency Reconfiguration Agreement (FRA and R2006-1421) with Nextel under which Nextel was to reconfigure the County's frequencies on the 800 MHz radio band. Under the terms of the FRA, the County relinquishes its current frequencies and relocates its system to newly assigned replacement frequencies. On February 27, 2007, the Board approved the mutual Assignment of FCC Licenses/Reconfiguration Certification and Closing Certificates (R2007-0279). The Frequency Reconfiguration Agreement with Nextel sets forth; 1) the frequencies to be reconfigured, 2) the process for reconfiguration of the frequencies by the County, 3) the costs of the reconfiguration, and 4) the process by which the County will be reimbursed for its costs and its Vendors paid for their costs. This Agreement implements the majority of the reconfiguration services. Pursuant to both Agreements, Nextel will directly reimburse Motorola for the total costs of this Agreement.

**Attachments:**

Reconfiguration Implementation Phase Agreement

**Recommended by:** \_\_\_\_\_

*Anthony Wolf*

**Department Director**

10/31/08

**Date**

**Approved by:** \_\_\_\_\_

*[Signature]*

**County Administrator**

12/16/08

**Date**

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>*</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_

Budget Account No: Fund \_\_\_\_ Department \_\_\_\_ Unit \_\_\_\_ Object \_\_\_\_

Reporting Category \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

\* Pursuant to the terms of this Agreement as well as the FRA with Nextel, the total amount of this agreement (\$1,967,259.80) will be paid to Motorola directly by Nextel.

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS:

### A. OFMB Fiscal and/or Contract Development & Control Comments:

Jim Duml 12-2-08  
OFMB  
(140) 12/16/08 CN 12/16/08

Jim J. Jaworski 12/12/08  
Contract Dev. and Control  
This Contract complies with our  
contract review requirements.

### B. Legal Sufficiency:

[Signature] 12/5/08  
Assistant County Attorney

### Reconfiguration Implementation Phase Agreement

Motorola, Inc. ("Motorola") and **County of Palm Beach** ("Customer" or "Licensee"), whose main address is **2633 Vista Parkway, West Palm Beach, FL 33411-5610**, enter into this Reconfiguration Implementation Phase Agreement ("Agreement"), pursuant to which Licensee will purchase and Motorola will sell the Reconfiguration Implementation Phase products or services described below, and the parties will perform their duties as described in this Agreement. Motorola and Licensee may be referred to individually as a "Party" and collectively as the "Parties." This Agreement is made with reference to the following recitals.

A. On August 6, 2004, the Federal Communications Commission ("FCC") issued a Report and Order FCC 04-168 that modified its rules governing the 800 MHz band to minimize harmful interference to public safety communications systems. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration FCC 04-294. The August 6 and December 22, 2004 orders, and any supplemental orders issued by the FCC, are collectively referred to as the "Order."

B. Pursuant to the Order, certain licensees of 800 MHz channels used in public safety or other systems must relinquish their existing channels and relocate their systems to other licensed channels ("Replacement Channels"); and Nextel Communications, Inc. must relinquish some of its existing channels and must provide and pay relocation funds ("Relocation Funds") to enable affected licensees (like Licensee) to relocate their systems onto Replacement Channels and reconfigure their systems so that they are "Comparable Facilities" (as defined below)

C. The FCC has appointed a Transition Administrator (the "TA") to ensure that the rebanding initiative proceeds on schedule and in a planned and coordinated manner so that disruption to a licensee's system is minimized. In the TA's "Reconfiguration Handbook," the two phases to accomplish reconfiguration are described as the "Reconfiguration Planning Phase" and the "Reconfiguration Implementation Phase." This Agreement addresses only the Reconfiguration Implementation Phase. Licensee has selected Motorola to provide the "Reconfiguration Implementation Phase Products and Services" (as defined below).

D. The Parties acknowledge that additional products or services may be needed for Licensee to achieve Comparable Facilities, and these additional products may be provided by other vendors and these additional services may be performed by Licensee's own personnel or by its other contractors. This Agreement describes only the Reconfiguration Implementation Phase Products and Services (and, if applicable, Upgrades) that Motorola is providing to Licensee.

E. This Agreement is not intended to, and does not, apply to the delivery of any products or services that are not related to the Reconfiguration Implementation Phase activities. If Licensee desires to purchase from Motorola products or services that are not related to these reconfiguration activities, the Parties will document that transaction in another separate contract. However, Licensee may use this Agreement to purchase upgraded subscriber equipment. Upgrades will be paid with Licensee's own funds and not by Nextel.

F. In some transactions with licensees it will be appropriate to complete the Reconfiguration Implementation Phase activities in multiple phases, with the first phase being the delivery and deployment of subscriber equipment and the second phase being all other work. If Licensee and Motorola agree this multi-phase approach is appropriate, then Motorola's Proposal identified below as Exhibit C will address only specific subscriber equipment (including Upgrades, if applicable) and related services, and the Parties will amend this Agreement in the future to add one or more additional Proposals to address the remaining Reconfiguration Implementation Phase work.

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



## Section 1 EXHIBITS

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

Exhibit A	Payment Milestone Schedule (Inapplicable to Subscriber Only Transactions)
Exhibit B	System Acceptance Certificate (Inapplicable to Subscriber Only, No Services Transactions)
Exhibit C	Motorola's Proposal dated <b>December 7, 2007</b> , ( <i>Revised on 04/25/2008, 08/19/2008 and 10/06/2008</i> ), which includes all of the "Technical and Implementation Documents" such as (if applicable): the "Reconfiguration Products List," the "Reconfiguration Services Statement of Work" or "SOW," including Benchmark Tests, if any, the "Reconfiguration Acceptance Test Plan" or "ATP," and the "Performance Schedule"
Exhibit D	Software License Agreement
Exhibit E	Insurance Requirements

## Section 2 DEFINITIONS

In addition to the defined terms above, capitalized terms used in this Agreement have the following meanings:

2.1. "Acceptance Tests" means those tests described in the Reconfiguration ATP, the primary purpose of which is to verify that the Licensee's System has been relocated onto Replacement Channels and reconfigured consistently with this Agreement.

2.2. "Benchmark Tests" means the initial tests performed by Motorola on behalf of Licensee to determine the current condition, capability, and functionality of Licensee's System. Depending on the complexity and specific requirements of the reconfiguration efforts, the Benchmark Tests may include testing of some or all of the following: channel capacity, signaling capacity, baud rate and access time, geographic coverage, penetration, redundancy, and other functional and operational capabilities and limitations of Licensee's existing facilities. The precise requirements of the Benchmark Tests are described in the Reconfiguration Services Statement of Work. Qualified representatives of Licensee may observe the performance of the Benchmark Tests.

2.3. "Comparable Facilities" means, as more fully described at Section 90.699(d) of the FCC's Rules, 47 C.F.R. §90.699(d), and as interpreted by the FCC in its orders and rulings, the Licensee's System (including the subscriber radio equipment) having at least the same operational capabilities that existed before relocation, including (1) equivalent channel capacity; (2) equivalent signaling capacity, baud rate, and access time; (3) coextensive geographical coverage; and (4) equivalent operating costs.

2.4. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Agreement, of any other agreement between the Parties or of any applicable protective or similar order, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing party.

2.5. "Contract Price" means the price for the Reconfiguration Implementation Phase Products and Services, whether set forth in one or multiple Proposals. The Contract Price excludes any applicable sales or similar taxes.



and any Rebanding Radios, Non-Kit Accessories, and Flash Kits which will be invoiced directly to Nextel pursuant to Section 5.2.1.1.

- 2.6. "Cost Estimate" means the Licensee's certified estimate of costs as provided to Nextel and the TA submitted in conjunction with a request for Relocation Funds to provide Comparable Facilities.
- 2.7. "Licensee's Final Certification" means the Licensee's final certification to Nextel and the TA certifying that (i) the Acceptance Tests described in the Reconfiguration ATP have been satisfactorily completed, (ii) all necessary reconfiguration work has been satisfactorily completed to provide Licensee with Comparable Facilities, and (iii) Nextel and Licensee have agreed on the sum paid for such relocation of the Licensee's facilities.
- 2.8. "Customer Suitability Assessment" means the initial assessment services performed by Motorola to determine whether Licensee's System (infrastructure) is suitable for updating using the Motorola Software that has been especially modified for purposes of the 800 MHz band reconfiguration.
- 2.9. "Effective Date" means that date upon which all Parties have executed this Agreement.
- 2.10. "Field Services" means the reflashing and installation of a Flash Kit (as defined in Section 3.1.4), firmware, programming, creation of user templates and/or setting of local configurations or other on-site services in accordance with the FCC's 800MHz band plan on Licensee's System.
- 2.11. "Force Majeure" means a material event, circumstance, or act of a third party (including Nextel or the TA) that is beyond a Party's reasonable control. An act of God, the public enemy, a government entity, or another Party (including another Party's failure to comply with the 800 MHz Rules); strikes or other labor disturbances, general unavailability of necessary materials, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots are examples of a Force Majeure.
- 2.12. "Infringement Claim" means a third-party claim alleging that the Reconfiguration Implementation Phase Products manufactured by Motorola or any Motorola Software infringes upon the third-party's United States patent or copyright.
- 2.13. "Motorola Software" means Software that Motorola or its affiliated company owns.
- 2.14. "Nextel" means Nextel Communications, Inc. and any other affiliate, including Sprint Nextel.
- 2.15. "Non-Motorola Software" means Software that a party other than Motorola or its affiliated company owns.
- 2.16. "Non-Kit Accessory" means an accessory that is used for subscriber radios but is not part of the radio kit.
- 2.17. "Products" means either the hardware, Software, or both, that are provided under this Agreement.
- 2.18. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to any documents delivered by Motorola under this Agreement or any Motorola Software or equipment.
- 2.19. "Rebanding Radio" means a Motorola manufactured rebanding subscriber radio product (mobile or portable), including the accessories in the radio kit, that is designed and manufactured specifically for the 800 MHz rebanding initiative and is designated by Motorola with an "RB" model number.
- 2.20. "Reconfiguration Implementation Phase Products" means those Products to be provided by Motorola under this Agreement.



**Motorola Proprietary and Confidential**

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

5

- 2.21. "Reconfiguration Implementation Phase Services" means those implementation services to be provided by Motorola under this Agreement.
- 2.22. "Reconfiguration Implementation Phase Products and Services" means those Reconfiguration Implementation Phase Products and Reconfiguration Implementation Phase Services that Motorola sells under this Agreement.
- 2.23. "Software" means the Motorola and Non-Motorola Software in object code format that is furnished under this Agreement, including any releases or software kits to reprogram radios. This Agreement does not involve any source code.
- 2.24. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.
- 2.25. "System" means the hardware and software products that comprise the Licensee's existing 800 MHz radio communications system.
- 2.26. "System Acceptance" means the Acceptance Tests have been successfully completed.
- 2.27. "Trade-In Non-Kit Accessory" means a legacy accessory that is used for a Trade-In Radio but is not part of the radio kit, is owned and has been used by the Licensee, and which will be provided to Motorola as a trade-in in exchange for a Non-Kit Accessory on a one-for-one basis.
- 2.28. "Trade-In Radio" means a radio (whether manufactured by Motorola or any other manufacturer) that is owned and has been used by a Customer, and which will be provided to Motorola as a trade-in in exchange for a Rebanding Radio on a one-for-one basis.
- 2.29. "Upgrades" means upgraded features and functionalities to the Rebanding Radios that exceed what Licensee requires for Comparable Facilities. If applicable, the Upgrades are to be paid by Licensee with its own funds, and not by Nextel, and any portion of this transaction related to the Upgrades is not subject to the TA or Nextel oversight.

### Section 3 SCOPE OF AGREEMENT AND TERM

#### 3.1. SCOPE OF WORK.

3.1.1. General. The Parties will perform their respective contractual responsibilities in accordance with this Agreement, including the Technical and Implementation Documents.

3.1.2. Licensee Responsibilities. Licensee is responsible for all activities that are reasonable, necessary and prudent to make the Licensee's System satisfy the Comparable Facilities standard. Licensee has selected Motorola to assist it in accomplishing these activities and has determined that the Reconfiguration Implementation Phase Products and Services are necessary for Licensee's System to satisfy the Comparable Facilities standard.

3.1.2.1. Licensee will designate a project manager who will be Licensee's point of contact person. Licensee will employ reasonable efforts to assist Motorola in providing the Reconfiguration Implementation Phase Services, and will provide reasonable and timely access to Licensee's equipment, facilities, personnel and relevant information.

3.1.2.2. Licensee has contracted with Nextel in a Frequency Reconfiguration Agreement ("FRA") which, among other things, contractually obligates Nextel to pay directly to Motorola the Contract Price. Promptly after execution of the FRA, Licensee will provide to Motorola a copy of those portions of the FRA that pertain to

Motorola's services, products, pricing and payment, including Schedules C and D to the FRA (redacted if necessary to exclude information not pertaining to Motorola).

3.1.2.3. Licensee has submitted its Cost Estimate to Nextel and the TA, and will provide amended certified Cost Estimate(s) to Nextel and the TA if and when appropriate, including when any change order is requested by either Party. For the limited purpose of assisting Nextel and the TA to evaluate Licensee's Cost Estimate, Motorola authorizes Licensee to and Licensee will provide to Nextel and the TA a copy of this Agreement, including the exhibits and pricing, but such information is and remains Motorola Confidential Information as provided below in Section 13 (and pursuant to Non-Disclosure Agreements Motorola has with Nextel and the TA). After the successful completion of the Acceptance Tests described in the Reconfiguration ATP, Licensee will perform any other tests necessary for it to verify that its System meets the Comparable Facilities standard; and upon that verification, will submit Licensee's Final Certification to Nextel and the TA.

3.1.2.4. For the limited purpose of assisting Nextel and the TA to verify consistency concerning the rebanding products and services approved in the FRA and the rebanding Products and services ordered by Licensee and provided to Licensee under this Agreement, either Motorola or Licensee may provide to Nextel and the TA records showing the rebanding Products ordered, shipped, delivered, etc. (or a written summary of these records), and the services performed, but such records shall remain the Confidential Information of the applicable Party as determined by Section 13 below and will be protected under any non-disclosure agreements the Party has with Nextel and the TA.

3.1.3. **Motorola Responsibilities.** Motorola will provide the Reconfiguration Implementation Phase Products, and perform the Reconfiguration Implementation Phase Services, all in accordance with this Agreement.

3.1.4. **Reprogramming.** (Note: this section is not applicable to every customer system.)

Motorola and Nextel have entered into an agreement (the "Development Services Agreement") to modify and test certain Motorola Software for rebanding because some customer systems have equipment that is capable of being reprogrammed rather than being replaced. The Development Services Agreement is confidential, and nothing in this Agreement is intended to reduce or nullify the confidential nature of the Development Services Agreement. As part of the Development Services Agreement and subject to various requirements, limitations and restrictions, Motorola has agreed to offer "Flash Kits" to appropriate customers so that their equipment may be reprogrammed. Concerning infrastructure equipment, Motorola will provide Flash Kits only if Motorola has performed a Customer Suitability Assessment and has determined that the customer's equipment is suitable for reprogramming. Concerning Motorola-manufactured subscriber equipment, Motorola will provide available Flash Kits without a suitability assessment, but Licensee acknowledges that not all Motorola subscriber models are capable of being reprogrammed. Even if a customer's system is of the type and model that is suitable for reprogramming, if Motorola determines that the customer's system is not on the last release of the Motorola Software, reprogramming might be infeasible or may require supplemental services, hardware, cabling, third party licensing fees, or other equipment to migrate the customer's system to the last supported version of the Motorola Software (referred to as "Direct Installation Services").

3.1.4.1 Based upon the results of the Customer Suitability Assessment, the Reconfiguration Services SOW should indicate if Direct Installation Services are known and needed and, if so, the scope of the Direct Installation Services; and the appropriate number and type of Flash Kits to be ordered from Motorola to match the requirements of Licensee's System and upgrade plan as indicated in the Customer Suitability Assessment; and whether Motorola proposes to perform the Field Services concerning the installation of the Flash Kits.

3.1.4.2. If Licensee (rather than Motorola) performs the inventory of System equipment, Licensee agrees that its inventory report will be accurate and sufficiently detailed so that Motorola may perform the Customer Suitability Assessment. If the inventory report contains inaccurate, erroneous, or incomplete inventory information, Motorola is not liable for an incorrect or incomplete Customer Suitability Assessment; and any reassessment or consequences caused by Licensee's inaccurate, erroneous, or incomplete inventory information will be the responsibility of Licensee.

3.1.4.3. Motorola is not obligated to (and does not intend to) offer, sell or provide to Licensee the Flash Kits for infrastructure equipment if Motorola does not perform the Customer Suitability Assessment and determines that Licensee's System is suitable. If Motorola performs the Customer Suitability Assessment and determines that infrastructure equipment in Licensee's System is suitable, and if Motorola performs the Direct Installation Services, if needed, and if Licensee orders the Flash Kits, then Motorola will offer to perform the Field Services (the scope and price of the Field Services will be addressed by means of a change order). **To the extent applicable, Motorola's obligations to sell and provide Flash Kits, Direct Installation Services, and/or Field Services will be expressly described in the Reconfiguration Products List and Reconfiguration Services SOW. If they are not so described, then Section 3.1.4 is not applicable to this transaction. Nothing in this Agreement shall restrict or limit a qualified third party service provider selected by Licensee from performing Field Services, but if a party other than Motorola provides the Field Services, the warranty in Section 8.2.2 is inapplicable.**

### 3.2. CHANGE ORDERS.

3.2.1. General. Either Motorola or Licensee may request changes within the general scope of this Agreement which, if agreed, will be reflected in a written change order. A change order is not effective until it is executed by each of the Parties. The Parties will negotiate in good faith any requested change order.

3.2.2. Reconfiguration Implementation Phase Products and Services. If a requested change causes (or is likely to cause) an increase in the Contract Price: (1) Motorola will provide Licensee with its written estimate of: (a) the scope of the changes to the Products and Services, and (b) the increase in the Contract Price due to the requested change, and (2) Licensee will perform its own analysis of the impact of the requested change on the Contract Price and the necessity of the changes to achieve the Comparable Facilities standard, and (3) Licensee will submit to Nextel and the TA its modified Cost Estimate and proposed FRA change order. Licensee will provide to Motorola a copy of any approvals or rejections of modifications to the Cost Estimate and to the FRA by Nextel or the TA.

3.2.3. Change Orders Not Approved by Nextel and the TA. If the commencement of all or a portion of the changed work is authorized in writing by Licensee but the change order is: (i) not submitted by Licensee to Nextel and the TA, or (ii) submitted but not approved by Nextel and the TA, then the authorized change in the work and the Contract Price will automatically convert to a request for additional work to be paid by Licensee with its own funds and the conversion will be without prejudice to Licensee's right to submit or re-submit the change order to Nextel or the TA or to dispute the decision by Nextel or the TA refusing to approve the change order.

3.2.4. Emergency Change Orders. If the subject of a change order involves a total System failure or a critical failure that diminishes radio communications and causes a significant public safety risk and if Motorola and Licensee reasonably conclude that remediation efforts must occur before Licensee obtains Nextel and TA approval, then the Parties will follow the change order process to the extent reasonably practical, Motorola will perform the remediation work described in the Emergency Change Order, Licensee will promptly request approval or ratification of the Emergency Change Order by Nextel and the TA, and the provisions of Section 3.2.3 will apply if Nextel or the TA withhold approval.

3.3. **MAINTENANCE AND SUPPORT SERVICES.** Other than the warranty services described in Section 8, this Agreement does not cover any warranty, maintenance and support services. If Licensee and Motorola wish to address maintenance and support services, they may do so in a separate agreement.

3.4. **SOFTWARE.** Motorola Software, including subsequent releases and Flash Kits, is licensed to Licensee in accordance with Motorola's applicable standard software license agreement (a copy of which is attached hereto as Exhibit D and is incorporated herein by this reference). Non-Motorola Software is licensed to Licensee in accordance with the applicable standard software license agreement of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the applicable Motorola software license agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under that Motorola software license agreement. Motorola makes no



8



representations or warranties of any kind regarding Non-Motorola Software. Licensee hereby accepts and agrees to abide by all of the terms and restrictions of the applicable software license agreement.

3.5. **REBANDING RADIOS AND TRADE-IN RADIOS.** Licensee agrees that for each and every Rebanding Radio (and, as applicable, Non-Kit Accessory) that Motorola provides to Licensee under this Agreement (and for each and every upgraded radio that is provided in lieu of a Rebanding Radio by Motorola under any agreement), Licensee shall deliver to Motorola a Trade-In Radio (and, as applicable, Trade-In Non-Kit Accessory) on a one-for-one basis. Licensee will deliver the Trade-In Radios and Trade-In Non-Kit Accessories to Motorola as soon as practical after they are replaced by the Rebanding Radios and Non-Kit Accessories or at a different time mutually agreed by the Parties (but in no event later than 90 days after delivery of the Rebanding (or upgraded) Radio. Title to the Trade-In Radios and Trade-In Non-Kit Accessories shall pass from Licensee to Motorola upon delivery. Licensee acknowledges that Motorola intends to temporarily store the Trade-In Radios and Trade-In Non-Kit Accessories for inspection and inventory by Motorola and Nextel and to destroy them thereafter. Licensee shall be responsible to comply with its asset disposition policies and requirements concerning the Trade-In Radios and Trade-In Non-Kit Accessories.

3.5.1. **Licensee's Failure to Deliver Trade-In Radios and/or Trade-In Non-Kit Accessories.** If for any reason the number of Rebanding Radios (or upgraded radios) and/or the number of Non-Kit Accessories delivered by Motorola to Licensee exceeds the number of Trade-In Radios and/or the number of Trade-In Non-Kit Accessories delivered by Licensee to Motorola (the "Unmatched Equipment"), then Motorola will notify Licensee of this deficiency and Licensee will at its expense immediately return to Motorola the Unmatched Equipment in new condition. If Licensee fails to return the Unmatched Equipment to Motorola, then Motorola may charge Licensee for retaining the Unmatched Equipment and the unit price will be the full list price of the most similar non-rebanding Motorola radio and/or Non-Kit Accessory (or such lesser price as Motorola in its sole discretion may determine). Alternatively, Motorola may resort to any other available legal or equitable remedy, including specific performance. Licensee acknowledges that Nextel is not responsible to pay for Unmatched Equipment and Licensee agrees to pay Motorola for the Unmatched Equipment. If Licensee returns the Unmatched Equipment to Motorola but it is not in new condition, then Motorola may charge Licensee for the returned used Unmatched Equipment in an amount equal to the diminished value from new condition and Licensee agrees to pay this amount.

#### Section 4 PERFORMANCE SCHEDULE

4.1. **SCHEDULE.** The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Licensee represents that it has obtained all necessary approvals (including Nextel, the TA; and if necessary its legislative or governing authority) and authorizes Motorola to proceed with performance of this Agreement.

4.2. **DELAYS.** No Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party will notify the other Party if it becomes aware of a Force Majeure that will significantly delay performance. The notifying Party will give the notice promptly after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances. If Licensee (including its other contractors), Nextel or the TA delays the Performance Schedule, the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay.

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

##### 5.1. CONTRACT PRICE.

5.1.1. **Contract Price.** The Contract Price for the Upgrades (if applicable) in U.S. dollars is \$0. Licensee agrees to pay the Contract Price for Upgrades and any applicable taxes and acknowledges that Nextel is not obligated to pay for Upgrades and applicable taxes. Motorola will not disclose to Licensee the price for Rebanding Radios (or RB radio equivalents if they are upgraded), Non-Kit Accessories, and Flash Kits but those items are covered by



Section 5.2.1.1 below. The Contract Price in U.S. dollars for all other Reconfiguration Implementation Phase Products and Services is **\$1,967,259.80**, as set forth in the Pricing Summary sheets in the applicable Proposal. Licensee represents that (1) its Cost Estimate is sufficient to cover the Contract Price and any applicable sales or similar taxes; and (2) Nextel and the TA have reviewed and approved Licensee's Cost Estimate.

5.1.2. Payment from Nextel; Licensee Not Liable for Contract Price. Except for the Upgrades and applicable taxes, payment of the Contract Price and the price for Rebanding Radios (or RB radio equivalents if they are upgraded), Non-Kit Accessories, and Flash Kits is to come from Nextel and Licensee shall not be liable to pay Motorola these amounts. Notwithstanding the above, if Nextel pays any portion of this amount to Licensee rather than to Motorola, Licensee will immediately forward the payment to Motorola. Motorola agrees to accept direct payments from Nextel if Nextel clearly identifies the applicable Motorola invoice; Motorola further agrees to apply these direct payments from Nextel to the Contract Price.

5.1.3. Motorola's Protections Concerning Payment by Nextel. If requested by Motorola, Licensee will execute necessary documents and take all such actions that are reasonable or necessary to promote the prompt payment by Nextel to Motorola. The Parties will cooperate with each other and provide to each other, and to Nextel and the TA, such information (other than Confidential Information, which is governed by Section 13.1) as is reasonable or necessary to facilitate the prompt payment of the Contract Price to Motorola.

## 5.2. INVOICING AND PAYMENT.

5.2.1. Invoicing. Motorola will send to Licensee correct invoices for Upgrades upon shipment of the upgraded radio, and payment is due within thirty (30) days of receipt of invoice. Motorola will invoice Nextel for the Rebanding Radios (or RB radio equivalents if they are upgraded), Non-Kit Accessories, and Flash Kits upon shipment in accordance with a confidential agreement between Motorola and Nextel. As to the other Reconfiguration Implementation Phase Products and Services, Motorola will submit correct invoices to Licensee, with a copy to Nextel, in accordance with the pre-approved payment milestones set forth in Exhibit A. Licensee's contact person and address for invoice purposes are: **Mark Filla, Palm Beach County, Electronic Services & Security Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5610**. Licensee may change this contact person or address by written notice to Motorola. Upon receipt of an invoice, Licensee will promptly (but in no event longer than seven (7) calendar days) inspect the invoice, verify whether it correctly states the payment milestone, and notify Nextel in writing (via facsimile or priority overnight carrier) that Licensee approves the invoice and accepts the milestone (the "Approval Notification"). Licensee will attach a copy of the invoice to the Approval Notification. When Licensee sends to Nextel the Approval Notification, Licensee will concurrently provide to Motorola's project manager a copy of the Approval Notification so that Motorola may know approximately when Nextel receives it. If for any reason Licensee disapproves the invoice, Licensee will promptly give written notice to both Motorola and Nextel; the disapproval notice will explain the reasons for Licensee's disapproval. Motorola will promptly correct any inaccurate invoice that Licensee disapproves, and resubmit the corrected invoice using the same process as described above in this paragraph.

5.2.1.1. Motorola will provide to Licensee only a bill of lading for Rebanding Radios, Non-Kit Accessories, and Flash Kits, and provide the applicable invoice directly to Nextel; or Motorola may provide to Licensee an invoice at the typical sales prices/values for these products or at zero dollars (\$0) with a notation that reflects the fact that Nextel has paid (or will pay) for these products directly to Motorola. If Motorola presents to Licensee a bill of lading or an invoice as permitted by this Section 5.2.1.1, Licensee will follow the Approval Notification process as described above but may assume the invoice amount is correct (and has no liability for incorrect invoices).

5.2.2. Tax ID Number. Motorola's Federal Tax Identification Number is 36-1115800.

5.2.3. Audit of Licensee's Records. The Order provides that after the reconfiguration work is completed, the TA will perform an audit of Licensee's records and "true up" procedure, whereby the reconfiguration work actually performed will be examined relative to the reconfiguration work described in Licensee's Cost Estimate, and any



### Motorola Proprietary and Confidential

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

payment adjustments will be calculated and made. During this true up procedure, Motorola and Licensee will work together in good faith and will act reasonably in order for Licensee to accurately account for the invoices from and payments to Motorola. If necessary, the Parties will execute a change order to conform the scope of the actual reconfigured work performed to the scope of the contracted reconfigured work; this change order will be submitted for approval and may result in an increase or decrease to the Contract Price. Nothing in this Agreement grants Nextel, the TA, the FCC, any part of the U.S. federal government, or Licensee the right to audit Motorola's records concerning this Agreement or any other matter.

5.3. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will prepay and add all freight charges to the invoices. Title to the Products, excluding Software, will pass from Motorola to Licensee upon shipment. Software is governed by the applicable software license agreement. Risk of loss to Products will pass from Motorola to Licensee upon delivery. Motorola will pack and ship all Products in accordance with good commercial practices.

#### Section 6 SITES AND SITE CONDITIONS (To the extent applicable.)

6.1. ACCESS TO SITES. Licensee will provide any necessary construction and building permits, zoning variances, licenses, and any other approvals related to Licensee's property and equipment that are necessary to develop or use the sites or equipment; and access to the Licensee's work sites as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Reconfiguration Services Statement of Work. Motorola will comply with the requirements of Palm Beach County Ordinance 03-030, as amended, with regard to the performance of criminal history records checks prior to accessing Licensee's sites, as well as the insurance requirements identified in Exhibit E

6.2. SITE CONDITIONS. Licensee will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable OSHA and industry standards. To the extent applicable, Licensee will ensure that these work sites have adequate physical space; air conditioning and other environmental conditions; electrical power outlets, distribution and equipment; and telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Products or performing services at a Licensee work site, Motorola will inspect the work site and advise Licensee of any apparent deficiencies or non-conformities with the requirements of this Section.

#### Section 7 SYSTEM ACCEPTANCE (Inapplicable to Subscriber Only Transactions)

7.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Licensee at least five (5) days notice before the Acceptance Tests commence. Acceptance testing will occur only in accordance with the Reconfiguration ATP.

7.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, Licensee and Motorola will memorialize this event by promptly executing the System Acceptance Certificate. If Licensee reasonably believes that the completed Acceptance Tests have failed, Licensee will provide to Motorola a written notice that includes the specific details of the failure. If Licensee does not provide to Motorola the notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance, but will be corrected according to a mutually agreed punch list schedule.

7.3. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance and when all Motorola deliverables have been delivered and all Motorola work as described in this Agreement has been completed. When Final Project Acceptance occurs, Licensee and Motorola will promptly memorialize this final event by so indicating in the appropriate place on the System Acceptance Certificate.

7.4. COPIES TO NEXTEL AND THE TRANSITION ADMINISTRATOR. Licensee will provide to both Nextel and the TA a copy of all executed System Acceptance Certificates.



Motorola Proprietary and Confidential

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

**Section 8 REPRESENTATIONS AND WARRANTIES (To the extent applicable.)**

**8.1. EQUIPMENT AND PARTS WARRANTY.**

8.1.1. Equipment. For one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first, Motorola warrants that newly manufactured equipment it provides under this Agreement will be free from material defects in materials and workmanship under normal use and service. As used in Section 8, the term "Beneficial Use" means use for the intended purpose, excluding testing and training. This Agreement does not create or extend any warranties concerning equipment that was part of the System and was already in service at the Effective Date.

8.1.2. Parts. For ninety (90) days from the date of shipment to Licensee, Motorola warrants that component parts and boards that it provides under this Agreement will be free from material defects in materials and workmanship under normal use and service.

**8.2. MOTOROLA SOFTWARE WARRANTY.**

8.2.1. Standard Software Warranty in Newly Manufactured Equipment. For one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first, Motorola warrants the unmodified Motorola Software installed or embedded in newly manufactured equipment and delivered under this Agreement, when used properly and in accordance with the product documentation, 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 Motorola Software. Whether a defect occurs will be determined solely with reference to the published product documentation. Except as provided in Section 8.2.2, this Agreement does not create or extend any warranties concerning Software that was part of the System and was already in service at the Effective Date.

8.2.2. Special Motorola Software Warranty. This special Motorola Software warranty applies only to (i) Flash Kits for subscriber radios if Motorola receives Licensee's order for the appropriate number and type of Flash Kits and performs the Field Services concerning the subscriber radios; and to (ii) Flash Kits for infrastructure Equipment if Motorola performs the Customer Suitability Assessment, determines in writing that Licensee's System is suitable, performs the Direct Installation Services, if needed, receives Licensee's order for the appropriate number and type of Flash Kits, and performs the Field Services concerning the infrastructure equipment.

THE MOTOROLA SOFTWARE THAT IS MODIFIED UNDER THE DEVELOPMENT SERVICES AGREEMENT (EXCLUDING SPECIAL FEATURES AND OTHER SOFTWARE THAT IS OUTSIDE THE SCOPE OF THE DEVELOPMENT SERVICES AGREEMENT), WHEN INSTALLED BY MOTOROLA, WILL PERFORM IN ALL MATERIAL RESPECTS AND WILL INCLUDE MATERIALLY ALL FEATURES AND FUNCTIONALITY AS THE LAST MOTOROLA-SUPPORTED VERSION OF MOTOROLA SOFTWARE IN THE SYSTEM AND SUBSCRIBER EQUIPMENT WHICH IS BEING UPDATED AND/OR REPLACED. TO FURTHER AND SPECIFICALLY CLARIFY, MOTOROLA IS MAKING CHANGES, UPDATES AND MODIFICATIONS TO THE LAST MOTOROLA-SUPPORTED VERSION OF THE MOTOROLA SOFTWARE, AND IT IS THOSE CHANGES (REBANDING CHANGES) THAT MOTOROLA WARRANTS WILL RESULT IN MATERIALLY THE SAME FEATURES AND FUNCTIONALITY VERSUS THE LAST MOTOROLA-SUPPORTED VERSION OF THE MOTOROLA SOFTWARE. THE PARTIES MUTUALLY UNDERSTAND THAT MOTOROLA IS NOT PROVIDING A WARRANTY FOR ANY CHANGES OR LOSS IN FEATURES AND FUNCTIONALITY ("GETTING TO THE BASELINE LAST RELEASE") THAT MIGHT RESULT FROM FIRST HAVING TO UPGRADE ANY EXISTING LEGACY SYSTEM OR EQUIPMENT TO THE LAST MOTOROLA-SUPPORTED VERSION OF THE MOTOROLA SOFTWARE (PRIOR TO MAKING THE REBANDING MODIFICATIONS THAT ARE THE SUBJECT OF THE DEVELOPMENT SERVICES AGREEMENT). LICENSEE WILL HAVE NINETY (90) DAYS FROM SYSTEM ACCEPTANCE OR BENEFICIAL USE OF THE MOTOROLA SOFTWARE,

WHICHEVER OCCURS FIRST, TO NOTIFY MOTOROLA IN WRITING OF A SOFTWARE WARRANTY CLAIM AS PROVIDED IN THE PRECEDING TWO SENTENCES. AFTER RECEIPT OF THE NOTICE, MOTOROLA WILL MAKE A GOOD FAITH INVESTIGATION OF THE WARRANTY CLAIM; AND IF THIS INVESTIGATION CONFIRMS A VALID WARRANTY CLAIM, MOTOROLA WILL (AT ITS OPTION AND AS ITS SOLE OBLIGATION AND THE CUSTOMER'S EXCLUSIVE REMEDY) EITHER: (1) CORRECT THE SOFTWARE DEFECT WITHOUT FURTHER CHARGE TO NEXTEL OR LICENSEE; (2) ACCEPT A RETURN OF THE EQUIPMENT THAT CONTAINS THE DEFECTIVE SOFTWARE AND OFFER TO EXCHANGE AN EQUIVALENT PRODUCT PURSUANT TO THIS AGREEMENT AND PROVIDE A CREDIT AGAINST THE PURCHASE PRICE IN THE AMOUNT EQUAL TO THE DIMINUTION IN VALUE OF THE EQUIPMENT CONTAINING THE DEFECTIVE SOFTWARE; OR (3) PAY TO LICENSEE AN AMOUNT EQUAL TO THE DIMINUTION IN VALUE OF THE EQUIPMENT CONTAINING THE DEFECTIVE SOFTWARE. THIS ACTION WILL BE THE FULL EXTENT OF MOTOROLA'S LIABILITY FOR THIS SOFTWARE DEFECT WARRANTY CLAIM. IF MOTOROLA'S INVESTIGATION OF LICENSEE'S WARRANTY CLAIM INDICATES THE CLAIM IS INVALID, MOTOROLA WILL BE ENTITLED TO CHARGE LICENSEE FOR RESPONDING TO THE CLAIM ON A TIME AND MATERIALS BASIS USING MOTOROLA'S THEN APPLICABLE RATES.

8.2.3. Flash Kit Medium Warranty. For 120 days from the date of shipment to Licensee or until System Acceptance if Motorola is performing the Field Services, Motorola warrants that the Flash Kit medium (i.e., the disks and/or dongles) that it provides under this Agreement will be in usable condition. To assert a warranty claim under this Section 8.2.3, Licensee must notify Motorola in writing of the claim before the expiration of the warranty period. Upon receipt of this notice, Motorola will provide a replacement Flash Kit medium to Customer as its sole and exclusive remedy for a breach of this Flash Kit Medium warranty.

8.3. **RECONFIGURATION SERVICES WARRANTY.** Motorola is not providing any new or additional warranties or extensions concerning Licensee-owned equipment or previously installed Software that is modified by the Reconfiguration Implementation Phase Services (except as provided in Section 8.2.2, if applicable). However, if that equipment or Software is covered under a written warranty or a maintenance contract between Licensee and Motorola that was entered into prior to the Effective Date, this Agreement does not adversely affect those pre-existing rights of Licensee. For ninety (90) days from the date of System Acceptance, Motorola warrants that the Reconfiguration Implementation Phase Services were performed in a good and workmanlike manner. THIS RECONFIGURATION SERVICES WARRANTY DOES NOT COVER ANY SERVICES OR DUTIES PERFORMED OR OWED BY NEXTEL, LICENSEE, OR ANY OTHER CONTRACTOR HIRED BY THEM. MOTOROLA DOES NOT WARRANT THAT LICENSEE'S SYSTEM WILL BE COMPARABLE FACILITIES AFTER THE RECONFIGURATION WORK IS COMPLETED. IF LICENSEE BELIEVES ITS SYSTEM DOES NOT ACHIEVE COMPARABLE FACILITIES STATUS AFTER THE RECONFIGURATION WORK IS COMPLETED, IT MAY REQUEST FURTHER CHANGE ORDERS TO ACHIEVE COMPARABLE FACILITIES, THE CONTRACT PRICE WILL BE INCREASED ACCORDINGLY, AND ANY DISPUTE IN THIS MATTER WILL BE SUBMITTED TO THE TRANSITION ADMINISTRATOR FOR NON-BINDING MEDIATION AND RESOLUTION.

8.4. **EXCLUSIONS TO EXPRESS WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from use of the Products in other than their normal, customary, and authorized manner; misuse, accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; or Licensee's failure to comply with all applicable industry and OSHA standards; (ii) interoperability of Reconfigured Products with other subsystems (e.g., a CAD); (iii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iv) batteries or other consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.



8.5. **WARRANTY CLAIMS.** To assert a warranty claim (other than concerning Section 8.2.2 or 8.2.3), Licensee must notify Motorola in writing of the claim before the date which is thirty (30) calendar days after the expiration of the warranty period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Licensee) repair the defective Product (or part), replace it with the same or equivalent Product (or part), or re-perform the Reconfiguration Services. This action will be the full extent of Motorola's liability hereunder and constitutes Licensee's sole remedy. If this investigation indicates the warranty claim is invalid or "out of scope," then Motorola may invoice Licensee for responding to the claim on a time and materials basis using Motorola's then current labor rates and for any new or replacement Products (or part) delivered to Licensee. Notwithstanding any reimbursement claim Licensee may have against the Relocation Funds, Licensee will pay the invoice within thirty (30) days from the invoice date. Repaired or replaced Product and parts are warranted for the balance of the original applicable warranty period. All replaced Products or parts will become the property of Motorola.

8.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original end user and are not assignable or transferable.

8.7. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS, EQUIPMENT, MOTOROLA SOFTWARE, AND RECONFIGURATION SERVICES PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES, THE PRODUCTS, EQUIPMENT, MOTOROLA SOFTWARE, AND RECONFIGURATION SERVICES ARE PROVIDED "AS IS" AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOTOROLA DOES NOT WARRANT THAT LICENSEE'S USE OF THE MOTOROLA SOFTWARE OR PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE OR THE PRODUCTS WILL MEET LICENSEE'S PARTICULAR REQUIREMENTS. MOTOROLA MAKES NO WARRANTIES CONCERNING NON-MOTOROLA SOFTWARE. LICENSEE IS RESPONSIBLE FOR, AND MOTOROLA MAKES NO WARRANTY CONCERNING, THE BACK-UP AND DISASTER RECOVERY PROCEDURES, FACILITIES AND EQUIPMENT, OR DATA ENTRY AND LOADING. MOTOROLA DOES NOT WARRANT THAT THE SYSTEM OR EQUIPMENT OR SOFTWARE IN THE SYSTEM THAT IS MODIFIED BY THE RECONFIGURATION SERVICES, OR ANY NEWLY PROVIDED EQUIPMENT OR SOFTWARE, WILL SATISFY THE COMPARABLE FACILITIES STANDARD; THAT DETERMINATION IS FOR LICENSEE TO MAKE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

## Section 9 **DISPUTES**

9.1. **SETTLEMENT PREFERRED.** Except as otherwise required by the Order (e.g., Cost Estimate disputes) and except for a claim relating to intellectual property or breach of confidentiality provisions, the Parties, through their respective project managers, will attempt to settle any dispute arising from this Agreement through consultation and good faith negotiation. The dispute will be escalated to appropriate higher level managers of the Parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen by the Parties within thirty (30) days after notice by one of the Parties demanding non-binding mediation. The Parties will not unreasonably withhold their consent to the selection of a mediator and will share the cost of the mediation equally; may postpone mediation until they have completed some specified but limited discovery about the dispute; and may replace mediation with another form of non-binding alternative dispute resolution ("ADR").

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



### **Motorola Proprietary and Confidential**

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

two-month ADR period if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party.

## Section 10 DEFAULT AND TERMINATION

If a Party fails to perform a material obligation under this Agreement, the other Party to whom performance is due may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. The defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, to provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the cure plan. If Licensee is the defaulting Party, Motorola may stop work on the project until it approves the cure plan or receives payment. If a defaulting Party fails to cure the default, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Parties any of its Confidential Information. Non-defaulting Parties will mitigate damages.

## Section 11 INDEMNIFICATION

11.1. **POTENTIAL DAMAGE TO EXISTING EQUIPMENT.** Licensee acknowledges that Motorola, Licensee's employees, or others might cause damage to equipment that is part of Licensee's System when performing the Reconfiguration Services, and that such damage may occur in the absence of negligence by any party. Motorola is not responsible for damage to equipment unless it is caused by Motorola's negligence or intentional wrongdoing, in which case Motorola at its option will repair or replace the damaged equipment or refund its fair market value. Before Licensee asserts a damage claim against Motorola under this section, it will first investigate the cause of the damage and the investigation must result in adequate proof that Motorola's negligence or intentional wrongdoing caused the damage. This provision does not diminish any rights Licensee might have under any pre-existing Motorola warranty or maintenance agreement.

11.2. **INDEMNITY BY MOTOROLA.** Motorola will defend at its expense and hold harmless Licensee against any claim, suit, demand, or cause of action brought by a third party against Licensee that is based on and to the extent it is caused by the negligence or willful misconduct of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, and which results in personal injury, death, or direct damage to tangible property ("Motorola Claim"). Motorola will indemnify Licensee from any liability, judgment, awards and damages resulting from a Motorola Claim and pay all losses, expenses or direct damages incurred by Licensee and caused by the Motorola Claim. The foregoing indemnity is conditioned on (i) Licensee giving Motorola prompt, written notice of any Motorola Claim, and providing to Motorola cooperation (and, if requested, reasonable assistance) in the defense of the Motorola Claim; and (ii) Motorola having sole control in the defense of the Motorola Claim and all negotiations for its settlement or compromise. Motorola will have no indemnity liability for the negligence or fault of Licensee, its other contractors, Nextel, or the TA, or any of their employees, agents or representatives. This section states the full extent of Motorola's general indemnification from liabilities that are in any way related to Motorola's performance under this Agreement. If a third party asserts a claim against both Parties, each Party will defend itself and will pay the claim to the extent of its percentage liability. For example, if the Parties have equal liability for the claim, they each will pay one-half of the amount plus their own defense costs.

## 11.3. PATENT AND COPYRIGHT INFRINGEMENT.

11.3.1. Motorola will defend at its expense any suit brought against Licensee to the extent that it is based on an Infringement Claim, and Motorola will indemnify Licensee for those costs and damages finally awarded against Licensee for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: Licensee 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; Licensee providing to Motorola cooperation and, if requested, reasonable assistance in the defense of the Infringement Claim.



11.3.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Licensee the right to continue using the Products, replace or modify them so that they become non-infringing while providing functionally equivalent performance, or grant Licensee a credit for the Products as depreciated and accept their return.

11.3.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon the combination of the Products 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 Products; any Product that is not Motorola's design or formula; a modification of the Motorola Software by a party other than Motorola; the failure by Licensee to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement, or, to the extent that the Infringement Claim could have been avoided or losses diminished if Licensee implemented Motorola's new Products as part of the reconfiguration rather than modifying existing or used products. This section states the entire liability of Motorola for infringement of patents and copyrights by the Products or any parts thereof.

## Section 12 LIMITATION OF LIABILITY

Licensee acknowledges that the limitations set forth in this Section are integral to the prices being charged by Motorola under this Agreement, and that if Motorola assumed further liability other than as set forth in this Section 12, the prices would of necessity be set substantially higher. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, contribution, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the Contract Price. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA (AND ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES) WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS, OPPORTUNITIES OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION), THE SALE OR USE OF THE PRODUCTS, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. ALL CLAIMS BY A PARTY AGAINST ANOTHER PARTY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, MUST BE BROUGHT WITHIN TWO YEARS FROM THE DATE THE CAUSE OF ACTION ACCRUES EXCEPT FOR MONEY DUE UPON AN OPEN ACCOUNT.** Some states do not allow the exclusion or limitation of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply in those states. However, the Parties intend for this Section 12 to apply to the maximum extent allowed under applicable law.

## Section 13 CONFIDENTIALITY AND PROPRIETARY RIGHTS

13.1. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, the Parties may provide each other with Confidential Information. Any inventory report or Customer Suitability Assessment concerning Licensee's System that Motorola prepares for and delivers to Licensee shall be the Confidential Information of Licensee unless otherwise agreed by the Parties in writing. Any other document concerning the reconfiguration of Licensee's System that Motorola prepares for and delivers to Licensee under this Agreement (collectively, "Documentary Deliverable") shall be the Confidential Information of Motorola unless otherwise agreed by the Parties in writing,

13.1.1. Non-Disclosure. To the extent permitted by the Florida Public Records Act, Chapter 119, Florida Statutes, each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by law or a court of competent jurisdiction; restrict disclosure of Confidential Information to its employees who have a "need to know" and not





copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who have access to it that it is confidential and not to be disclosed to others, but those precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care. The confidentiality restrictions and obligations contained herein shall be in addition to any confidentiality restrictions or obligations contained in any other agreement (whether prior to, contemporaneous or subsequent to the date of this Agreement) between Motorola on the one hand and the TA, Nextel or Licensee on the other hand, as well any protective order or confidentiality restrictions or rules issued by the FCC or the TA.

13.1.2. Use. Unless otherwise provided in this Agreement, a Party may use the Confidential Information of the other Party only in furtherance of the performance of this Agreement or any other agreement between the Parties. Notwithstanding the preceding sentence, Motorola may use the information in any inventory report or Customer Suitability Assessment for its own business purposes or to assist Licensee or its other contractors or consultants in the overall effort to plan and reconfigure Licensee's System. Except for a Documentary Deliverable, Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement or any other agreement between the Parties.

13.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Licensee the Products or services remain vested exclusively in Motorola, and this Agreement does not grant to Licensee (or Nextel) any shared development rights of intellectual property.

Except as explicitly provided in the applicable Software License Agreement, Motorola does not grant to Licensee (or Nextel), either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Licensee (and Nextel) will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence will not apply to Open Source Software, if any, which is governed by the standard license of the copyright owner.

#### Section 14 GENERAL

14.1. **TAXES.** The Contract Price does not include any amount for taxes, assessments or duties, all of which will be paid by Nextel or by Licensee as to the Upgrades, except as exempt by law.

14.2. **ASSIGNABILITY AND SUBCONTRACTING.** No Party may assign this Agreement without the prior written consent of the other Party. Motorola may subcontract any portion of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

14.3. **WAIVER.** Failure or delay by a Party to exercise any right or power under this Agreement will not operate as a waiver of the right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

14.4. **SEVERABILITY.** If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.



14.5. INDEPENDENT CONTRACTORS. Each Party is an independent contractor with respect to the other, and a Party and its personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement grants a Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

14.6. HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement is an arm's length transaction and will be fairly interpreted in accordance with its terms and conditions and not for or against a Party.

14.7. GOVERNING LAW. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed.

14.8. ENTIRE AGREEMENT. This Agreement, including all Exhibits and the applicable Software License Agreement, constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to that subject matter (but not any other product sales, software license, or maintenance and support agreements). This Agreement may be amended or modified only by a written instrument signed by authorized representatives of the Parties. The preprinted terms and conditions found on any Licensee purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs the document.

14.9. NOTICES. Notices required to be given by a Party to the others must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola

Attn: Rick Harrelson

Motorola, Inc.

1064 Greenwood Blvd, Suite 400

Lake Mary, Florida 32746

E-mail: Rick.Harrelson@motorola.com

Licensee

Attn: Mark Filla, Palm Beach County

Electronic Services & Security Division

2633 Vista Parkway

West Palm Beach, FL 33411

E-Mail: mfilla@pbcgov.org

Director Facilities Development & Operations

2633 Vista Parkway

West Palm Beach, FL 33411

E-mail: awolf@pbcgov.org

County Attorney's Office

301 N. Olive Ave

West Palm Beach, FL 33401



14.10. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Licensee will obtain and comply with all FCC licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment.

14.11. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents to the other that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

14.12. VOLUNTARY AGREEMENT. Each Party represents and warrants that it is fully aware of the terms contained in this Agreement and has voluntarily entered into this Agreement, having had a full and fair opportunity to seek the advice of counsel and other professionals or consultants as it considers necessary.

14.13. NO LIENS. Motorola agrees not to lien Licensee's System to secure payment of the Contract Price.

14.14. SURVIVAL OF TERMS. The following provisions survive the expiration or termination of this Agreement for any reason: Section 3.4 (Software); Section 3.5 (Rebanding Radios and Trade-In Radios); if any payment obligations exist, Section 5 (Contract Price, Payment and Invoicing); to the extent applicable, Section 8 (Representations and Warranties); Section 9 (Disputes); Section 11 (Indemnification); Section 12 (Limitation of Liability); and Section 13 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 14.

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

**PALM BEACH COUNTY, FLORIDA (Licensee)**  
**BY ITS BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Name: John F. Koons  
Title: Chairman  
Date: \_\_\_\_\_

**MOTOROLA, INC (Vendor)**

By: Gregory J. Paff  
Name: Gregory J. Paff  
Title: Ref. 1 Rebanding, 24 yr.  
Date: Oct. 9, 2008

**APPROVED AS TO FORM & LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**APPROVED AS TO TERM AND CONDITIONS**

By: Amy Wolf  
Dir., Facilities Development & Operations



IN WITNESS WHEREOF, the parties hereto have executed this contract document as of the date and year first above written.

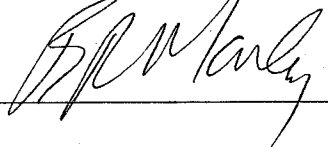
ATTEST: (Licensee)

SHARON R. BOCK,  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

ATTEST (MOTOROLA, INC):

NAME: BRUCE MARLEY  
TITLE: ASST. SECRETARY

By: 

EFFECTIVE DATE: \_\_\_\_\_

Nextel Assigned Deal Number: \_\_\_\_\_

Exhibit A

Payment Milestone Schedule

Depending on the Contract Price set forth in Section 5.1.1, the following payment milestones apply:

1. Contract Price < \$300,000

Mobilization (i.e., contract execution)	50%
Motorola SOW Complete/System Acceptance	50%

2. Contract Price \$300,000 to \$1,000,000

Mobilization (i.e., contract execution)	35%
Complete Programming & Installation of Subscriber Equipment	45%
Motorola SOW Complete/System Acceptance	20%

3. Contract Price > \$1,000,000

Mobilization (i.e., contract execution)	35%
Shipment of Subscriber Equipment	20%
Complete Programming & Installation of Subscriber Equipment	15%
Complete Rebanding Infrastructure/Final Cutover	15%
Motorola SOW Complete/System Acceptance	15%

Exhibit B  
System Acceptance Certificate  
**SAMPLE**

Licensee Name: County of Palm Beach

Project Name: Motorola 800 MHz. Rebanding Project

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Licensee acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Licensee Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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

**FINAL PROJECT ACCEPTANCE:**

Motorola has provided and Licensee has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Licensee Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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



**Exhibit C**

**Motorola's Proposal  
Including the Technical and Implementation Documents**



**Motorola Proprietary and Confidential**

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

23

Exhibit D

Motorola Software License Agreement

This Exhibit A Software License Agreement ("Agreement") is between Motorola, Inc., ("Motorola"), and County of Palm Beach ("Licensee").

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

Section 1 DEFINITIONS

- 1.1 "Designated Products" means products provided by Motorola or other suppliers 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



Motorola Proprietary and Confidential

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.



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.



**Motorola Proprietary and Confidential**

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

25

4.5 The license for Cityworks or Customer Service Request Software is for the use of the Software with the Designated System or for the specified number of Concurrent Users for which it was provided, the purpose for which it was designed and only for the application specific use covered by this Agreement, or the Primary Agreement. This license does not allow access to the Software through other Designated Systems except as specifically permitted. "Concurrent User" means the maximum number of concurrent connections to Software authorized by this Agreement or the Primary Agreement at any one instance in time. "Designated System" means the computer hardware and operating system configuration specified in the Primary Agreement for which the Software is licensed for use. Additional Designated System licenses are required for communication with additional instances of a database or additional databases.

4.6. 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 may 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.



**Motorola Proprietary and Confidential**

Design, technical and pricing information contained in this offering is considered proprietary and may not be shared with any person or agency not directly associated with the addressee without the express written consent of Motorola, Inc., or its designees.

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 E

Required Insurance Coverage

Motorola shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance coverage as described herein at limits, including endorsements, set forth in the Insurance Coverage & Limit Table below. Motorola shall deliver to Owner Certificate(s) of insurance evidencing that such policies are in full force and effect, upon execution of this Agreement. Such certificate(s) shall adhere in every respect to the conditions set forth herein.

The requirement contained herein as to types and limits, as well as Licensee's approval of insurance coverage to be maintained by Motorola are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Motorola under the Agreement.

**COMMERCIAL GENERAL LIABILITY** Motorola shall agree to maintain a standard ISO version Commercial General Liability policy form, or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Motorola's, Contractual Liability, Broad Form Property Damage, X-C-U Coverages (if applicable), Severability of Interest including Cross Liability, and be in accordance with all of the limits, terms and conditions set forth herein. Motorola agrees this coverage shall be provided on a primary basis.

**BUSINESS AUTOMOBILE LIABILITY** Motorola shall agree to maintain a standard ISO version Business Automobile Liability coverage form, or its equivalent, providing coverage for all owned, non-owned and hired automobiles, and in accordance with all of the limits, terms and conditions set forth herein. Motorola agrees this coverage shall be provided on a primary basis. Notwithstanding the foregoing, should Motorola not own any automobiles, the business auto liability requirement shall be amended to allow Motorola to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

**WORKER'S COMPENSATION & EMPLOYER'S LIABILITY** Motorola shall agree to maintain Worker's Compensation Insurance & Employers Liability, including Federal Act endorsement for U.S. Longshoremen's and Harbor Workers Act when any work is on or contiguous to navigable bodies of U.S. waterways and ways adjoining, covering all of its employees on the work site. This coverage shall be in accordance with all of the limits, terms and conditions set forth herein. Exemptions for a Motorola in or doing work in the Construction Industry, or proof of worker's compensation coverage provided by an employee leasing arrangement shall not satisfy this requirement. If any work is sublet Motorola shall require all subcontractors, if applicable, to similarly comply with this requirement. Motorola agrees this coverage shall be provided on a primary basis.

**SATISFYING LIMITS UNDER AN UMBRELLA POLICY:** If necessary, Motorola may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under an Umbrella or Excess Liability. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability provided the combined limits meet at least the minimum limit for each required policy. The Umbrella or Excess Liability shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The Licensee shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance.

**ADDITIONAL INSURED** Motorola agrees to list the Licensee as an Additional Insured on Commercial General Liability. Motorola shall agree the Additional Insured endorsements provide coverage on a primary basis. Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein.



**WAIVER OF SUBROGATION** Motorola shall agree by entering into this Agreement to a Waiver of Subrogation for Workers' Compensation providing coverage during the life of this Agreement. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein.

**RIGHT TO REVIEW & ADJUST** Motorola shall agree, notwithstanding the foregoing, the Licensee, by and through its Risk Management Department, in cooperation with the Department, reserves the right to periodically review, and adjust when necessary through contract amendments, any insurance requirements hereunder from time to time throughout the life of this Agreement. Furthermore, the Licensee reserves the right to review and reject any insurer providing coverage because of not operating legally. In such event, Licensee shall provide Motorola written notice of such adjusted limits and Motorola shall agree to comply within thirty (30) days of receipt thereof and to be responsible for any premium revisions as a result of any such reasonable adjustment.

**NO REPRESENTATION OF COVERAGE ADEQUACY:** The coverages and limits identified in the table have been determined to protect primarily interests of the Licensee only, and Motorola agrees in no way should the coverages and limits in the table be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect Motorola against any loss exposures, whether as a result of the construction project or otherwise.

**CERTIFICATE OF INSURANCE** Certificates of Insurance must provide clear evidence that Motorola's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on the Certificate.

In the event the Licensee is notified that a required insurance coverage will cancel or non-renewed during the period of this Agreement, the Motorola shall agree to furnish at least thirty (30) days prior to the expiration of such insurance, an additional certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereof is in effect. The Licensee shall have the right, but not the obligation, of prohibiting Motorola or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and accepted by the Licensee. The Licensee reserves the right to withhold payment, but not the obligation, to Motorola until coverage is reinstated.

#### ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

1. Shall clearly identify Palm Beach County, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured for all required insurance coverages, except Workers Compensation and Business Auto Liability.
2. Shall clearly indicate project name and project number to which it applies.
3. Shall clearly indicate a minimum ten (10) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
4. Evidence of renewal coverage must be provided upon renewal of any policy that may expire during the term of this Agreement.
5. Motorola shall deliver original Certificate(s) of Insurance to the following Certificate Holder address:

Palm Beach County  
c/o Capital Improvements Division  
2633 Vista Parkway  
West Palm Beach, FL 33411-5604

**DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION** Motorola shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or



self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

SUBCONTRACTOR'S INSURANCE: Motorola will require when applicable, each subcontractor employed by Motorola to purchase and maintain insurance according to Motorola's corporate policy.

INSURANCE COVERAGE & TABLE Motorola shall agree to maintain the coverages and limits of liability in accordance with and set forth by the Insurance Coverage & Table below:

TYPE OF COVERAGE	AMOUNT OF COVERAGE
<u>COMMERCIAL GENERAL LIABILITY:</u> Limit of Liability not less than:  Additional Insured status required:	\$1,000,000 per occurrence  Yes
<u>BUSINESS AUTO LIABILITY:</u> Limit of Liability not less than:	\$1,000,000 per occurrence
<u>WORKERS COMPENSATION &amp; EMPLOYER'S LIABILITY</u>  Coverage not less than:  Employers Liability Limits	Statutory  \$100/500/100

32