

**PURCHASE
AGREEMENT**

THIS PURCHASE AGREEMENT ("Agreement") is made and entered into as of the date of execution by both parties, by and between Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Motorola Solutions, Inc., a Delaware corporation authorized to do business in the State of Florida, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase 800 MHz radio system radio units and peripheral equipment, as well as maintenance and support of the existing 800 MHz radio system, from the Vendor in connection with "800-MHz Radio System" (the "Purchase"); and,

WHEREAS, on July 27, 2018, the Sarasota County Procurement Official Designee approved Sole Source No. 1768, thereby waiving the requirement for a County competitive process and authorizing this Agreement to be considered for approval; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient.

"Contract Price" means the price for the Products, excluding applicable sales or similar taxes and freight charges.

"Equipment" means the equipment listed in the List of Products that County purchases from Vendor under this Agreement.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act

of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

"Infringement Claim" means a third party claim alleging that the Equipment manufactured by Vendor or the Vendor Software directly infringes a United States patent or copyright.

"Vendor Software" means Software that Vendor or its affiliated company owns.

"Non-Vendor Software" means Software that another party owns.

"Open Source Software" (also called "freeware" or "shareware") software with either freely obtainable source code, license for modification, or permission for free distribution.

"Products" mean the Equipment and Software provided by Vendor under this Agreement.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Vendor under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Vendor or another party.

"Software" means the Vendor Software and Non-Vendor Software in object code format that is furnished with the Products.

II. PRODUCTS AND SERVICES

- A. The Vendor agrees to diligently provide all products and services for 800 MHz radio system radio units and peripheral equipment, as well as maintenance and support of the existing 800 MHz radio system, in accordance with the Statement of Work made part of this Agreement as Exhibit A, attached hereto and incorporated herein.

III. TERM AND DELIVERY

- A. This Agreement shall be effective as of October 1, 2018, and shall continue for a period of three years. This Agreement may be renewed for up to two additional one year periods subject to written agreement of both parties.
- B. Products and services shall be delivered in accordance with Exhibit B, Sarasota County Fee Schedule, Exhibit C, Site Address Matrix, and Exhibit D, Sarasota County 2018-2019 Pricing, as applicable, all of which are attached hereto and incorporated herein.

- C. Acceptance of the Products will occur upon delivery to County unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, County's use of the Products for their operational purposes will constitute acceptance.

IV. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor for the Purchase in accordance with the terms and conditions of this Agreement a total amount not to exceed Three Million Dollars and Zero Cents (\$3,000,000.00) for the initial three-year term, for providing all products and services as set forth in Exhibit A. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any work under this Agreement until receipt of a purchase order from the County that references this Contract No. SS 1768. Vendor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no purchase orders. If a purchase order is issued, the County reserves the right to amend reduce, or cancel the purchase order prior to shipment in its sole discretion.
- C. The County's next fiscal year performance and obligation to pay under this Agreement is contingent upon an appropriation of lawfully available funds by the Board of County Commissioners. The County shall promptly notify the Vendor if the necessary appropriation is not made.

V. METHOD OF PAYMENT

- A. The County shall pay the Vendor through payment issued by the Clerk of the Circuit Court in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., upon receipt of the Vendor's invoice and written approval of same by the County's Administrative Agent indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the address indicated on the purchase order on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B and E) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County's Administrative Agent.

- D. The Vendor's invoices shall be in a form satisfactory to the Clerk of the Circuit Court, who shall initiate disbursements. The Vendor is responsible for providing all necessary documentation that may be required by the County. The Vendor will not be required to disclose its confidential or proprietary cost and pricing data that is not set forth in this Agreement.
- E. The Equipment will be shipped to the County at the address set forth on the purchase order.

VI. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County's Administrative Agent requires the Vendor to perform additional services related to this Agreement then the Vendor shall be entitled to additional compensation based on the Fee Schedule, as amended, to the extent necessary to accommodate such additional work. The additional compensation shall be agreed upon before commencement of any additional services or changes and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service or work performed before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VII. INDEMNITIES AND LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. Vendor will defend at its expense any suit brought against County to the extent it is based on a third-party claim alleging that the Equipment manufactured by Vendor or the Vendor Software ("Vendor Product") directly infringes a United States patent or copyright ("Infringement Claim"). Vendor's duties to defend and indemnify are conditioned upon: County promptly notifying Vendor in writing of the Infringement Claim; Vendor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and County providing to Vendor cooperation and, if requested by Vendor, reasonable assistance in the

defense of the Infringement Claim. In addition to Vendor's obligation to defend, and subject to the same conditions, Vendor will pay all damages finally awarded against County by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Vendor in settlement of an Infringement Claim.

If an Infringement Claim occurs, or in Vendor's opinion is likely to occur, Vendor may at its option and expense: (a) procure for County the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Product and grant County a credit for the Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

Vendor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Product with any software, apparatus or device not furnished by Vendor; (b) the use of ancillary equipment or software not furnished by Vendor and that is attached to or used in connection with the Product; (c) Product designed or manufactured in accordance with County's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Product by a party other than Vendor; (e) use of the Product in a manner for which the Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by County to install an enhancement release to the Vendor Software that is intended to correct the claimed infringement. In no event will Vendor's liability resulting from its indemnity obligation to County extend in any way to royalties payable on a per use basis or the County's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Vendor from County from sales or license of the infringing Product.

C. This section shall survive the termination or expiration of this Agreement.

VIII. VENDOR'S INSURANCE

Vendor shall procure and maintain insurance as specified in Exhibit E Insurance Requirements, attached hereto and made a part of this Agreement.

IX. RESPONSIBILITIES OF THE VENDOR

A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.

- B. The Vendor agrees to respond to communication from the County within three working days unless a shorter response time is specified by the County.
- C. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- D. The Vendor agrees that it and its employees shall communicate with County employees and members of the public in a civil manner. All aspects of a Vendor's performance, including complaints received from County employees or members of the public, may impact the County's decision to renew or terminate this Agreement in accordance with the provisions contained herein. The County further reserves the right to suspend or debar the Vendor from consideration for award of future contracts in accordance with the Sarasota County Procurement Code if the Vendor does not abide by the terms of this subsection.
- E. The Vendor covenants and agrees that it and its employees shall be bound by the Standards of Conduct of §112.313, F.S., as it relates to work performed under this Agreement. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- F. Pursuant to §287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- G. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- H. The Vendor shall maintain books, records, documents, and other evidence directly pertaining to or connected with the Purchases under this Agreement

which shall be available and accessible at the Vendor's offices for the purpose of inspection, audit, and copying during normal business hours by the County, or any of its authorized representatives. Such records shall be retained for a minimum of five (5) fiscal years (from October to September) after completion of the agreement.

- I. §287.135, F.S., prohibits agencies from contracting with companies for goods or services that are on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel, and from contracting with companies for goods or services of \$1,000,000 or more that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations in Cuba or Syria. The lists are created pursuant to §215.473 and §215.4725, F.S. Contractor certifies that the organization is not listed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria, and understands that pursuant to §287.135, F.S., the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs. In accordance with §287.135, F.S., the County may terminate this Contract if a false certification has been made, or the Contractor is subsequently placed on any of these lists, or engages in a boycott of Israel or is engaged in business operations in Cuba or Syria.
- J. The Vendor shall notify the County's Administrative Agent at least one (1) day in advance of any meeting between the Vendor and any County Commissioner, regulatory agency or private citizen relating to this Agreement.
- K. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.

X. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County. Vendor will pre-pay and add all freight charges to the invoices. Title and risk

of loss to the Equipment will pass to County upon shipment. Title to Software will not pass to County at any time. Vendor will pack and ship all Equipment in accordance with good commercial practices.

XI. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The timely delivery of the products and services provided for hereunder is vitally important to the interest of the County.
- B. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- C. The Vendor shall commence preparation of the products for manufacture, shipment or delivery, as appropriate, immediately upon the Vendor's receipt of the County's Purchase Order. The time limits set forth herein shall commence to run on the date of the Purchase Order.
- D. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.
- E. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. The Vendor shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks.
- F. Vendor specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth herein, or as otherwise identified in the County's purchase order or specified by the County's Administrative Agent, subject only to delays caused by force majeure, or as otherwise defined herein.

XII. OBLIGATIONS OF COUNTY

- A. The County's Administrative Agent is designated to do all things necessary to properly administer the terms and conditions of this Agreement, including, but not limited to:
 - 1. Examination of all products delivered or supplied by Vendor for conformance with the terms of this Agreement; and
 - 2. Periodic reviews of the work of the Vendor as necessary for the completion of the Vendor's services during the period of this Agreement; and

3. Review of all Vendor documents and payment requests for approval or rejection.
- B. The County shall not provide any legal defense services to the Vendor in connection with any claim brought on behalf of or against the Vendor.

XIII. TERMINATION

- A. The County shall have the right at any time upon written notice to the Vendor to terminate the purchase of any products not yet supplied by the date of the notice. In that event, the County shall, upon receipt of the written notice, pay to the Vendor and the Vendor shall accept as full payment, a sum of money equal to (1) the fee for each properly delivered product, plus (2) the actual amount of any true and documented costs Vendor incurs as a direct result of the termination, less (3) all previous payments made in accordance with Section III.
- B. The County shall have the right at any time upon thirty (30) calendar days' written notice to the Vendor to terminate the services of the Vendor. The County shall pay to the Vendor and the Vendor shall accept as full payment for its services, a sum of money equal to the work completed in any commenced but incomplete services.
- C. Any failure of the Vendor to satisfy the requirements of this Agreement, as documented by the Administrative Agent, shall be considered a default of the Agreement and sufficient reason for termination.
 1. For defaults that are curable (as determined by the County), the Vendor shall be notified in writing by the County and shall have an opportunity to cure such default within ten (10) working days after notification.
 2. For defaults that are not curable (as determined by the County), notice of the termination date shall be given as deemed appropriate by the County.
- D. In the event the County's termination of this Agreement for default is in any way deficient, at the option of the County such termination shall be deemed to be a termination for convenience pursuant to this section.
- E. The parties may mutually agree to terminate this Agreement. Such termination shall be evidenced by a notice issued by the County. The County shall pay to the Vendor and the Vendor shall accept as full payment for its services, a sum of money equal to the work completed in any commenced but incomplete services.
- F. In the event that the Vendor has abandoned performance under this Agreement, then the County may terminate this Agreement upon three (3)

calendar days' written notice to the Vendor indicating its intention to do so. Payment for products supplied and services performed prior to the Vendor's abandonment shall be as stated above. Vendor shall have one hundred and eighty (180) days to submit invoices. Invoices submitted after one hundred and eighty (180) days may not be accepted for payment.

- G. The Vendor shall have the right to terminate this Agreement only in the event of the County failing to pay the Vendor's properly documented and submitted invoice within ninety (90) calendar days of the approval by the County's Administrative Agent.
- H. The County reserves the right to terminate and cancel this Agreement in the event the Vendor shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.
- I. After consultation with and written notice to the Vendor providing a reasonable opportunity to cure, the County shall have the right to refuse to make payment, in whole or part, due to:
 - 1. The quality of a portion, or all, of the Vendor's product or service not conforming to the requirements of this Agreement or other reasonable standard of quality;
 - 2. The Vendor's inability to complete delivery or performance of all products and services specified hereunder;
 - 3. The Vendor's failure to use the Agreement funds, previously paid the Vendor by the County, to pay Vendor's project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - 4. Claims made, or likely to be made, against the County, or its property;
 - 5. Damages to the County or a third party caused by the Vendor;
 - 6. The Vendor's failure or refusal to perform any other obligation under this Agreement after written notice and a reasonable opportunity to cure as set forth above.
- J. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIV. DISPUTE RESOLUTION

- A. To the extent Chapter 558, F.S. is applicable, the parties expressly opt out of the requirements of Chapter 558, F.S., within the meaning of §558.005(1), F.S.
- B. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Sarasota County, Florida, with the parties sharing equally in the cost of such mediation.
- C. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- D. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Sarasota County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- E. The parties hereby waive all rights to trial by jury for any litigation concerning this Agreement.
- F. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- G. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

XV. STOP WORK ORDER

The County's Administrative Agent, may at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The Administrative Agent may take one of the following actions:

1. Cancel the stop work order; or

2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XII.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XVI. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Vendor shall refund to Sarasota County any money which has been paid for same.
- C. During the Warranty Period, Vendor warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within County's control, this warranty expires eighteen (18) months after the shipment of the Equipment.
- D. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Vendor warrants the Vendor Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the Vendor Software. If Acceptance is delayed beyond six (6) months after shipment of the Vendor Software by events or causes within County's control, this warranty expires eighteen (18) months after the shipment of the Vendor Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.
- E. During the Warranty Period, Motorola warrants that the Services will be provided in a good and workman-like manner and will conform in all

material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed.

- F. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Vendor Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Vendor; County's failure to comply with applicable industry and OSHA standards, if any; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (if they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.
- G. To assert a warranty claim, County must notify Vendor in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Vendor will investigate the warranty claim. Vendor will (at its option and at no additional charge to County) repair the defective Equipment or Vendor Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Vendor Software. That action will be the full extent of Vendor's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Vendor may invoice County for responding to the claim on a time and materials basis using Vendor's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced deficient products or parts will become the property of Vendor.
- H. These express limited warranties are extended by Vendor to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.
- I. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND VENDOR SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. VENDOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

XVII. LIMITATION OF LIABILITY

Except for personal injury or death, Vendor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to

which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT VENDOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY VENDOR PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

XVIII. PRESERVATION OF VENDOR'S PROPRIETARY RIGHTS

- A. Vendor owns and retains all of its Proprietary Rights in the Equipment and Vendor Software, and nothing in this Agreement is intended to restrict its Proprietary Rights. All intellectual property developed, originated, or prepared by Vendor in connection with providing to County the Equipment, Software, or related services remain vested exclusively in Vendor, and this Agreement does not grant to County any shared development rights of intellectual property. Except as explicitly provided in Attachment 1, Software License Agreement, Vendor does not grant to County, either directly or by implication, estoppel, or otherwise, any right, title or interest in Vendor's Proprietary Rights. County will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.
- B. Vendor hereby puts County on notice that the third-party manufacturer(s) of any Equipment and the copyright owner(s) of any Non-Vendor Software may also possess proprietary rights as stated in various supplier agreements with Vendor. This Agreement does not affect such Proprietary Rights.

XIX. PUBLIC RECORDS

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Sarasota County
Public Records office**

**1660 Ringling Blvd.
Sarasota, FL 34236**

Phone: 941-861-5886

Email: publicrecords@scgov.net

XX. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. Time is of the essence with regard to each and every aspect of the Vendor's performance under this Agreement.
- C. The language of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.
- D. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.
- E. The Vendor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the County, except that claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- F. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- G. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.
- H. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- I. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed

to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

- J. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- K. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- L. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name:	<u>Justin Pounders</u>
Title:	<u>Customer Support Manager</u>
Address:	<u>1303 E. Algonquin Road</u> <u>Schaumburg, IL 60196</u>
Telephone:	<u>727-488-6299</u>
Facsimile:	<u>N/A</u>
E-mail:	<u>Justin.pounders@motorolasolutions.com</u>

County's Administrative Agent:

Name:	<u>Gerald Wheeler</u>
Title:	<u>Public Safety</u> <u>Communications Manager</u>
Address:	<u>6050 Porter Way</u> <u>Sarasota, FL 34232</u>
Telephone:	<u>941-323-8570</u>
Facsimile:	<u>N/A</u>
E-Mail:	<u>gwheeler@scgov.net</u>

- M. Any change in the County's Administrative Agent or the Vendor's Representative will be promptly communicated by the party making the change.
- N. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- O. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Purchase Agreement
 - 2. County's Purchase Order

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Motorola Solutions, Inc.

Signed By: _____

Signed By: _____

Print Name: _____

Print Name: Randy Johnson

Title: MSSSI/Territory Vice President

Date: 12-5-18

SARASOTA COUNTY

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: _____

CHAIR

DATE: 12-11-18

ATTEST:

KAREN E. RUSHING, Clerk of the Circuit
Court and Ex-Officio Clerk of the Board
of COUNTY Commissioners

BY: _____

DEPUTY CLERK

Approved as to form and correctness:

BY: _____

COUNTY ATTORNEY

Exhibit A
STATEMENT OF WORK

Upon request from County and at rates identified below, Vendor, will provide the following services and County agrees to pay in accordance with Exhibit B of this Agreement for all such services.

- A. Repair and restore to normal operating condition any communication equipment which forms part of the System, whether provided and installed by Vendor or not.
- B. Make improvements in the System's sites which are possible as a result of technological improvements.
- C. Services, within Vendor's capabilities and mutually agreeable to both the County and Vendor, that are otherwise not covered by this agreement.

Subscriber Unit Field Service Price Table

These subscriber maintenance monthly prices are available to any authorized user of the System.

MODEL 2017 – 2018

KVL (Key Loaders)	\$6.00
Mobile Control Station	\$6.00
Fire Station Alerting	\$15.00
MDT Family	\$15.00
Vehicular Charger	\$6.00
Mobexcom	\$15.00
Vehicular Adapter	\$7.50
Trimble Placer 450 or Family	\$7.50
VRM 650/750 or Family	\$15.00
XTS Family Radio	\$7.50
XTL Family Radio	\$7.50
APX Portable Family Radio	\$7.50
APX Mobile Family Radio	\$7.50

Exhibit A
STATEMENT OF WORK

Vendor's Hourly Rates and Installation Prices

FNE Installation Labor:	\$90.00 / Hour
FNE Technician Labor:	\$140.00 / Hour
Vendor System Technologist:	\$2000.00 / Day
Non-Technical Labor:	\$ 90.00 / Hour
Radio Programming:	\$44.00 / Per Radio
Front Mount Radio Removal:	\$50.00 / Per Radio
Front Mount Radio Installation:	\$157.00 / Per Radio (Sedan, Light Truck)
Trunk Mount Radio Removal:	\$62.50 / Per Radio
Trunk Mount Radio Installation:	\$187.50 / Per Radio (Sedan, Light Truck)
Trunk Mount Radio Installation:	Quote / Per Radio (Fire Truck, Heavy Vehicle)
Motorcycle Radio Removal:	\$50.00 / Per Radio
Motorcycle Radio Installation:	\$187.50 / Per Radio
Consolette / Control Removal:	Quote
Mobexcom Installation Labor:	Quote
Consolette / Control Installation:	Quote
Tower Climb Rate:	Quote
Tower Maintenance/Repair:	Quote

EXHIBIT B
SARASOTA COUNTY FEE SCHEDULE

County shall request services on an as needed basis and Vendor shall provide an invoice to the County for those services. County shall pay Vendor on a Time and Materials basis according to the rates listed in Exhibit A.

In no event shall the total cost for all invoices combined, whether for services, as described in Exhibit A, or equipment and accessories, as described in Exhibit D, exceed Three Million Dollars and Zero Cents (\$3,000,000.00) for the initial three-year term without an amendment to this Agreement.

EXHIBIT C
SITE ADDRESS MATRIX

DESIGNATION	SITE	ADDRESS	CITY/LOCATION	DENSITY	TYPE
A	12th ST. TOWER	1776 12TH ST.	CITY OF SARASOTA	HIGH	SIMULCAST
B	VO-TECH	4748 S. BENEVA ROAD	UNINCORPORATED SARASOTA COUNTY	HIGH	INTELLIREPEATER
C	OSPREY	101 OLD VENICE ROAD	UNINCORPORATED SARASOTA COUNTY	HIGH	INTELLIREPEATER
D	VENICE	721 CENTER ROAD	UNINCORPORATED SARASOTA COUNTY	HIGH	INTELLIREPEATER
E	NORTHPORT	6654 W. PRICE BLVD.	CITY OF NORTH PORT	LOW	INTELLIREPEATER
F	ENGLEWOOD	599 INDIANA AVENUE	UNINCORPORATED SARASOTA COUNTY	LOW	INTELLIREPEATER
G	911 (MAIN)	1660 RINGLING BLVD.	CITY OF SARASOTA	HIGH	SIMULCAST
H	911 (BACKUP)	101 N WASHINGTON BLVD.	CITY OF SARASOTA	N/A	N/A
I	HIHAT	3 MILES SOUTH FRUITVILLE RD ON UTOPIA ROAD	UNINCORPORATED SARASOTA COUNTY	LOW	INTELLIREPEATER

EXHIBIT D
SARASOTA COUNTY PRICING 2018-2019



EXHIBIT E is the "2018-2019 Sarasota County Florida Sole Source Motorola Equipment Pricing Schedule" for equipment supplied by Motorola Solutions ("Motorola") for use on the Sarasota County 800 MHZ radio system. All Motorola equipment is considered sole source and can only be purchased through Motorola Solutions direct, the authorized Motorola Manufacturers Representative, or the Motorola Parts department.

All Motorola Subscriber Equipment and Subscriber Accessories shall be offered and available to Sarasota County and all Eligible Purchasers within the County at the MSRP list price minus the applicable discount shown below. Eligible Purchasers shall be defined as Sarasota County, Agencies under the management of the County, and all other non-taxable governmental entities within the County. Radio pricing excludes the costs for installation and unit programming, which shall be quoted separately. No minimum quantity requirements apply. Additionally, Motorola, at its discretion, will offer to sell Parts to Sarasota County at the MSRP list price minus the applicable Parts discount shown below.

Discount Name	Discounted Products	Discount Rate off of List Price
Standard Sarasota Subscriber	Subscriber Equipment and related Accessories	25%
Standard Sarasota Parts	Motorola Parts	20%

The contractual basis for the purchase of Subscriber Equipment and their related Accessories by all Eligible Purchasers within the County shall be the Terms and Conditions contained in this Agreement. This Exhibit shall be valid for a period of 12 months from the Contract Date after which time the Parties shall negotiate a replacement to Exhibit D.

Individual situations and/or promotional specials may result in additional or greater unit, quantity, and/or trade-in discounts being available.

ORDERING PROCEDURES - PURCHASE ORDER REQUIREMENTS

- Be a valid Purchase Order (PO) or Contract/Notice to Proceed on official Letterhead.
- Identify "Motorola Solutions" or "Motorola Solutions, Inc." as the Vendor.
- Should reference on the face "Purchased under the Sarasota County - Motorola Service Agreement" and include the corresponding Agreement number.
- Include Payment Terms which shall not exceed the Florida Local Government Prompt Payment Act Section 218.70

EXHIBIT E INSURANCE REQUIREMENTS

For purposes of this Exhibit E, the terms "Vendor," "Contractor" and "Consultant" shall be interchangeable and the terms "Contract" and "Agreement" shall be interchangeable.

CONTRACTOR'S INSURANCE

Contractor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverage (including endorsements) and limits as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Insurance requirements itemized in this Contract and required of the Contractor shall extend to all subcontractors to cover their operations performed under this Contract.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VII or better.

Each insurance policy required by this Contract shall apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

The Contractor shall be solely responsible for payment of all premiums for Contractor's insurance contributing to the satisfaction of this Contract and shall be solely responsible for the payment of all deductibles and retentions under Contractor's policies.

Contractor shall furnish a Certificate of Insurance to the County Administrative Agent evidencing the types and amounts of coverage, including endorsements, required by this Contract prior to commencement of work and prior to expiration of the insurance contract, when applicable. Contractor shall provide the County with a minimum thirty (30) day notice of cancellation (10 days for non-payment of premium) or non-renewal of coverage. Notwithstanding these notification requirements, the Contractor will be required to provide County with 5-day prior written notice of any policy cancellation or non-renewal. Contractor will require subcontractor to furnish a Certificate of Insurance and endorsements and any required notices to the County Administrative Agent.

The County reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Contract, subject to Contractor's review for its compliance. County reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

A. WORKERS' COMPENSATION: Contractor agrees to maintain Workers' Compensation insurance in accordance with Florida Statutes, Chapter 440.

EXHIBIT E

INSURANCE REQUIREMENTS

Employers Liability to be included with a minimum limit of \$100,000.00 per accident/per disease/per employee. If work is to be performed over or adjacent to navigable water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included.

In the event the Contractor has "leased" employees, the Contractor or the employee leasing company must provide evidence of a Workers' Compensation policy for all personnel on the worksite.

Contractors who are exempt from Florida's Workers' Compensation law must provide proof of such exemption issued by the Florida Department of Financial Services, Bureau of Workers' Compensation.

B. COMMERCIAL GENERAL LIABILITY: Contractor agrees to maintain Commercial General Liability per ISO form CG0001 or its equivalent, including but not limited to coverage for premises and operations, personal injury, products & completed operations, liability assumed under an insured contract, and independent contractors with limits of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate covering all work performed under this Contract. Contractor agrees to endorse **Sarasota County Government** as an additional insured on the Commercial General Liability coverage.

C. BUSINESS AUTOMOBILE LIABILITY: Contractor agrees to maintain Business Automobile Liability with limits of not less than \$500,000.00 combined single limit for each accident covering all Owned, Non-Owned & Hired automobiles used in the performance of this Contract. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

If the Contractor is shipping a product via common carrier, the Contractor shall be responsible for any loss or damage sustained in delivery/transit.

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

A. SOFTWARE DEFINITIONS

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

"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).

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

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

"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.

"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 Vendor; 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.

B. SCOPE OF LICENSE. Vendor and County enter into this Agreement in connection with Vendor'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 Vendor is providing to County, and County's use of the proprietary software and affiliated documentation.

C. GRANT OF LICENSE.

1. Subject to the provisions of this Agreement, Vendor grants to County a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Vendor's copyrights and Confidential Information (as defined in the Purchase Agreement) embodied in the

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

Software to use the Software, in object code form, and the Documentation solely in connection with County's use of the Designated Products. This Agreement does not grant any rights to source code.

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 County'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 County, Vendor will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

D. LIMITATIONS ON USE.

1. County may use the Software only for County's internal business purposes and only in accordance with the Documentation and the Purchase Agreement. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, County 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.
2. County 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 Vendor'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. County may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that County may not operate that copy of the Software at the same time as the original Software is being operated. County may make as many copies of the Documentation as it

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

may reasonably require for the internal use of the Software.

3. Unless otherwise authorized by Vendor in writing, County will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. County may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if County provides written notice to Vendor 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. County must provide prompt written notice to Vendor at the time temporary transfer is discontinued.
- E. **OWNERSHIP AND TITLE.** Vendor, 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 Vendor or another party, or any improvements that result from Vendor's processes or, provision of information services). No rights are granted to County under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to County in this Agreement. All intellectual property developed, originated, or prepared by Vendor in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Vendor, and County will not have any shared development or other intellectual property rights.
- F. **LIMITED WARRANTY; DISCLAIMER OF WARRANTY.**
1. Unless otherwise stated in the Purchase Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Vendor's shipment of the Software (the "Warranty Period"). If County is not in breach of any of its obligations under this Agreement, Vendor 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 impairs 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 Vendor solely with reference to the Documentation. Vendor does not warrant that County's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

the Software or the Designated Products will meet County's particular requirements. Vendor makes no representations or warranties with respect to any third-party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to County for third party software provided by Vendor.

2. Vendor's sole obligation to County and County'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 Vendor cannot correct the defect within a reasonable time, then at Vendor's option, Vendor will replace the defective Software with functionally-equivalent Software, license to County substitute Software which will accomplish the same objective, or terminate the license and refund the County's paid license fee.
 3. Warranty claims are described in Article above.
 4. The express warranties set forth in this Agreement are in lieu of, and Vendor 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 County (whether or not Vendor 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, Vendor disclaims any warranty to any person other than County with respect to the Software or Documentation.
- G. TRANSFERS. County will not transfer the Software or Documentation to any third party without Vendor's prior written consent. Vendor'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 Vendor's radio products and County transfers ownership of the Vendor radio products to a third party, County may assign its right to use the Software (other than CPS and Vendor's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that County transfers all copies of the Software and Documentation to the transferee, and County and the transferee sign a transfer form to be provided by Vendor upon request, obligating the transferee to be bound by this Agreement.
- H. TERM AND TERMINATION
1. County's right to use the Software and Documentation will begin when the Purchase Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

Documentation have been provided by Vendor, unless County breaches this Agreement, in which case this Agreement and County's right to use the Software and Documentation may be terminated upon 30 days' notice by Vendor.

2. Within thirty (30) days after termination of this Agreement, County must certify in writing to Vendor 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 Vendor or destroyed by County and are no longer in use by County.
3. If County breaches this Agreement, Vendor may terminate this Agreement and be entitled to all available remedies at law or in equity (not including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation).
- I. CONFIDENTIALITY. County acknowledges that the Software and Documentation contain Vendor's valuable proprietary and Confidential Information and are Vendor's trade secrets to the extent allowed by Florida law.
- J. GENERAL SOFTWARE PROVISIONS
 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.
 2. COMPLIANCE WITH LAWS. County acknowledges that the Software is subject to the laws and regulations of the United States and County will comply with all applicable laws and regulations, including export laws and regulations of the United States. County will not, without the prior authorization of Vendor 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.
 3. ASSIGNMENTS AND SUBCONTRACTING. Vendor may assign its rights or subcontract its obligations under this License, or encumber or sell its rights in any Software, without prior notice to or consent of County.
 4. GOVERNING LAW. This Software License 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 of Florida. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event

ATTACHMENT 1 SOFTWARE LICENCE AGREEMENT

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.

5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Vendor and County. 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.
 6. **ORDER OF PRECEDENCE.** In the event of inconsistencies among this Attachment 1 and any other term or condition in the Purchase Agreement and exhibits, the parties agree that this Attachment 1 prevails only with respect to the County's licensed use of the Software, and not the Purchase Agreement and other exhibits.
- K. SECURITY. Vendor 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, Vendor will take the steps set forth in this Agreement and the Purchase Agreement to the extent applicable.