



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		06/28/10		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Sharron Mason x7247				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Alcatel-Lucent USA, Inc., a sole source provider, to purchase services and products related to microwave radio systems for 3 additional tower sites that will interface with the existing Alcatel-Lucent Digital Microwave Loop in the amount of \$472,826; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	722,859	15,777,141	7,500,000	24,000,000
Encumbered/Expended Amount	-722,859	-15,210,029	0	-15,932,888
This Item	0	-472,826	0	-472,826
BALANCE	0	94,286	7,500,000	7,594,286
FUND(S): TECHNOLOGY IMPROVEMENTS (CO'S/TAX NOTES)				
<p>COMMENTS: Funds are available from the 2008 and 2009 sale of Tax Notes and 2010 sale of Certificates of Obligation. This item, in the amount of \$472,826, will leave a current year allocation of \$94,286 for the Radio System Infrastructure Replacement project.</p> <p>STRATEGIC PLAN GOAL: Additional equipment for the upgrade and replacement of the existing microwave system for the radio system infrastructure replacement project relates to the City's Goals of Financially Strong City with Service Excellence and Safe Large City.</p>				
SUMMARY OF ITEM				
<p>Staff requests Council approval of an agreement between the City of Plano, Texas and Alcatel-Lucent USA, Inc. to purchase services and products related to microwave radio systems for 3 additional tower sites (School House, Communication Parkway and Radio Shop) that will interface with the existing Alcatel-Lucent Digital Microwave Loop for the City of Plano in the amount not to exceed \$472,826.00. City of Plano assigned Contract No. 2009-187-C.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution and Contract				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Alcatel-Lucent USA, Inc., a sole source provider, to purchase services and products related to microwave radio systems for 3 additional tower sites that will interface with the existing Alcatel-Lucent Digital Microwave Loop in the amount of \$472,826.00; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, The City Council has been presented a proposed Interlocal Cooperation Agreement for three tower sites that will interface with the existing Alcatel-Lucent Digital Microwave Loop for Municipal Services by and between the City of Plano, Texas, a substantial copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions of the Agreement should be approved, and that the City Manager or his authorized designee execute the Agreement on behalf of the City of Plano;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RESOLVES THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 28th day of June, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN CITY OF PLANO, TEXAS AND
ALCATEL-LUCENT USA INC.
2009-187-C**

THIS CONTRACT is made and entered by and between **ALCATEL-LUCENT USA INC.**, a Delaware corporation, whose address is 660 Data Drive, Plano, Texas 75075, hereinafter referred to as "Contractor" and the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

Alcatel-Lucent USA Inc. is the sole source provider of services and products to be provided for a microwave radio system and this purchase is exempt from competitive bid as provided for in V. T.C.A., *Local Government Code, Section 252.022(a)(7)*.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.
SCOPE OF SERVICES**

The parties agree that Contractor shall perform such services as are further described in the Statement of Work attached hereto and incorporated herein as **Exhibit "A"**. The parties understand and agree that deviations or modifications in the Statement of Work may be authorized from time to time by City, but said authorization must be made in writing and signed by all parties.

The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Statement of Work (**Exhibit "A"**); and
- (b) Tentative Timeline and Milestone Payment Information (**Exhibit "B"**); and
- (c) Pricing Summary (**Exhibit "C"**); and
- (d) Insurance Requirements (**Exhibit "D"**); and
- (e) Insurance Certificate (**Exhibit "E"**); and
- (f) Affidavit of No Prohibited Interest (**Exhibit "F"**); and
- (g) Payment and Performance Bonds (**Exhibit "G"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract

documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

II. TIME OF COMPLETION

Contractor agrees and covenants that all work hereunder shall be completed in accordance with the terms set out in the Tentative Timeline and Milestone Payment Information document attached hereto as **Exhibit "B"** and made a part hereof.

III. WARRANTY

Alcatel-Lucent warrants to City that, for the applicable warranty period set forth herein, (a) Equipment and Software media purchased hereunder and manufactured by Alcatel-Lucent (including those manufactured for Alcatel-Lucent by a contract manufacturer and based on Alcatel-Lucent's specification), under normal use and service, will be free from defects in material and workmanship; (b) Equipment and Software will materially conform to Alcatel-Lucent's specifications in effect on the date of acceptance; and (c) Services will be performed in a professional and workmanlike manner. However, Alcatel-Lucent makes no warranty that any Software will operate uninterrupted or error free. With respect to Products or partial assembly of Products furnished by Alcatel-Lucent but not manufactured by Alcatel-Lucent, Alcatel-Lucent hereby assigns, to the extent permitted, the warranties given to Alcatel-Lucent by its vendors of such items.

The warranty periods applicable to Alcatel-Lucent Equipment and Software are 12 months and 90 days, respectively, other than the Digital Microwave Equipment that has a 36 month warranty. The warranty period for Equipment and Software begins on the date of shipment except if Alcatel-Lucent performs installation Services for any Equipment or Software, in which case the warranty period begins on the date of Acceptance. The warranty period for Services is 30 days from the date of completion.

If any Equipment is not as warranted in this Article, then (a) City shall obtain from Alcatel-Lucent a return authorization number, and return the Equipment at its expense, together with the authorization number and a detailed description of the problem, to Alcatel-Lucent's designated repair facility; and (b) Alcatel-Lucent shall repair or replace the Equipment and return it at Alcatel-Lucent's expense to City's point of shipment. Alcatel-Lucent shall assume the risk of loss or damage to any Equipment returned to Alcatel-Lucent for repair or replacement from receipt thereof until delivery to City's point of shipment. If any Software is not as warranted in this Article, then, upon notice from City, Alcatel-Lucent shall correct the Software by (c) electronic means or (d) delivery to City of suitable media chosen solely by Alcatel-Lucent. If Alcatel-Lucent ascertains that Equipment is not readily returnable for repair, then at its option, Alcatel-Lucent may elect to repair or replace the Equipment at City's site. In such instances, City, at its

expense, shall make the Equipment accessible for repair or replacement and shall restore the site after Alcatel-Lucent has completed its repair or replacement. If, Alcatel-Lucent determines that it cannot, in a commercially reasonable manner, (i) repair or replace any Equipment, (ii) correct any Software, or (iii) correct any Services, then Alcatel-Lucent may, in its sole discretion, refund to City the Price of the Product or Services, less a reasonable adjustment for beneficial use. In repairing or replacing any Equipment, part of Equipment, or Software medium under this warranty, Alcatel-Lucent may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment, parts of Equipment, or Software medium. For any Equipment or parts thereof repaired, replaced or corrected under this Article, the warranty period applicable to the Equipment will continue for the longer of (iv) the remainder of the original warranty period or (v) 90 days after the date of shipment of the repaired or replaced Equipment. The warranty period for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period.

Notwithstanding any provision of this Agreement to the contrary, Alcatel-Lucent has no obligation to repair or replace any Equipment, correct any Software, or correct any Services if (a) the Product or any Software has been modified, repaired or reworked by anyone other than Alcatel-Lucent; or (b) the defect is the result of (i) any improper storage, handling or use by anyone other than Alcatel-Lucent, (ii) failure to provide a suitable climatic environment, (iii) operator error, (iv) improper installation of Equipment by anyone other than Alcatel-Lucent, (v) use in a manner not in accordance with the Documentation, (vi) failure to implement any new releases or update to the Software, (vii) any use of the Product in conjunction with another non-Alcatel-Lucent product (except to the extent provided in the Documentation), (viii) consumable items, including fuses, light bulbs, motor brushes and the like, (ix) Products which have had their serial numbers or month and year of manufacture removed, altered, defaced, or deleted, or (x) any damage by power failure, fire, explosion or any act of God or other cause beyond Alcatel-Lucent's control. The warranties set forth in this Article are nontransferable.

Warranty does not include: Alcatel-Lucent assisting in diagnostic efforts; access to Alcatel-Lucent's technical support web sites, databases, or tools; Product integration; on-site assistance; or Documentation updates. These Services are available during and after the warranty period at Alcatel-Lucent's published prices.

EXCEPT AS PROVIDED OTHERWISE HEREIN, THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE FOR PRODUCTS AND SERVICES IS THE EXCLUSIVE WARRANTY. ALCATEL-LUCENT DISCLAIMS ALL OTHER WARRANTIES IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE REMEDY PROVIDED UNDER THIS SECTION THIS IS CITY'S EXCLUSIVE REMEDY FOR FAILURE OF PRODUCTS OR SERVICES TO CONFORM TO THE WARRANTY.

**IV.
PAYMENT**

Total compensation for Contractor's work on the Project shall be in an amount not to exceed the sum of **FOUR HUNDRED SEVENTY TWO THOUSAND EIGHT HUNDRED TWENTY SIX AND NO/100 DOLLARS (\$472,826.00)** as set out in **Exhibit "C"**.

All payments for goods and services will be processed within 30 days after the goods are provided, the services completed, or a correct invoice is received, whichever is later, in accordance with the Texas "prompt payment law".

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**V.
PAYMENT AND PERFORMANCE BOND**

In the event this Contract amount exceeds \$25,000.00, a Payment bond in the amount of not less than one hundred percent (100%) of the Contract amount, conditioned upon the payment of all persons supplying labor or furnishing materials pursuant to the contract is required upon a form provided by City. In the event this Contract amount exceeds \$100,000.00, a Performance Bond in the amount of not less than one hundred and fifteen percent (115%) of the Contract amount, conditioned upon the faithful performance of the Contract, is required upon a form provided by City. The bonds are attached hereto and incorporated herein as **Exhibit "G"**.

**VI.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to section **VIII. INDEMNIFICATION** and section **XV. COMPLIANCE WITH APPLICABLE LAWS** set forth herein.

VII
LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

VIII.
INDEMNIFICATION

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY

PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR'S OPINION IS LIKELY TO OCCUR, CONTRACTOR SHALL, AT ITS EXPENSE: (A) PROCURE FOR CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT CITY A REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

IX. LIMITATION OF LIABILITY

Alcatel-Lucent and City acknowledge that they have negotiated the Price (among other things) in consideration of their agreement to limit certain of Alcatel-Lucent's liabilities. In no event is Alcatel-Lucent or any of its suppliers or licensors liable for any indirect, special, exemplary, consequential or incidental damages (including lost profits, lost revenues and other economic losses),

however caused and regardless of whether such damages are foreseeable or whether Alcatel-Lucent has been advised of their possibility.

Except for a claim for personal injury, loss of life and/or property damage caused in whole or in part, directly or indirectly by Alcatel-Lucent, Alcatel-Lucent's liability will be limited to actual damages. ALCATEL-LUCENT'S CUMULATIVE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES, EXCEPT FOR CLAIMS FOR PERSONAL INJURY, LOSS OF LIFE AND/OR PROPERTY DAMAGE, OF CITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THREE TIMES THE CONTRACT VALUE.

X. INSTALLATION, VERIFICATION AND ACCEPTANCE

If Alcatel-Lucent performs installation Services for any Product, then, upon completion of the installation, Alcatel-Lucent shall perform its acceptance tests for the Product in accordance with the Project Specific Statement of Work, Articles 7.5 HOP Acceptance and 8.0 Acceptance Plan. City may witness these verification tests. When Alcatel-Lucent has completed all of its verification tests for any Product to the satisfaction of Alcatel-Lucent and City, then Alcatel-Lucent shall deliver to City an Equipment and Software Verification certificate. Upon receipt of this certificate, (a) the Product shall be deemed to have been accepted by City, and (b) any failure by Alcatel-Lucent to perform the related installation Services in accordance with this Agreement shall be deemed to have been waived. If City undertakes any commercially beneficial use of any Product prior to the completion of Alcatel-Lucent's verification tests, then (a) the Product shall be deemed to have been accepted by City, and (b) the failure by Alcatel-Lucent to perform the related installation Services in accordance with this Agreement shall be deemed to have been waived.

If Alcatel-Lucent does not perform installation Services for any Product, then the Product shall be deemed to have been accepted by City when the related risk of loss or damage passes to City under this Agreement.

Documentation shall be deemed to have been accepted by City when the related risk of loss or damage passes to City under this Agreement.

XI. SOFTWARE

Upon delivery of any Software, Alcatel-Lucent grants to City, and City accepts, a nonexclusive, nontransferable license to use the portions of the Software (including any methods or concepts utilized therein) for which activation has been authorized by Alcatel-Lucent, solely on or with a single unit or arrangement of Equipment for which the Software was delivered. City may make one copy of any Software for backup and

archival purposes if the copy contains all of the Alcatel-Lucent proprietary notices contained in the original Software. All copies of all Software shall be Confidential Information. If Alcatel-Lucent modifies, updates or replaces any Software, or if City discontinues the use of any Product, then, within 30 days thereafter, City shall deliver to Alcatel-Lucent, or certify in writing to Alcatel-Lucent the destruction of, all Software superseded or discontinued as a result thereof.

XII. CONFIDENTIAL INFORMATION

Notwithstanding anything provisions contained in this section, City may disclose Confidential Information in accordance with applicable law.

If Alcatel-Lucent delivers to City any information or data marked or identified as confidential or proprietary ("Confidential Information") including software, then City shall not (a) disclose or otherwise make available the Confidential Information to any third party (except that City may disclose the Confidential Information to Alcatel-Lucent to the extent that they have a need to know the Confidential Information in connection with the operation and/or maintenance of any Product for City, provided, however, that prior to the disclosure, the Alcatel-Lucent has agreed in writing to treat the Confidential Information as confidential in accordance with the terms and conditions City' herein), (b) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any portion of the Confidential Information (except to the extent otherwise expressly permitted by this Agreement) or (c) use the Confidential Information for any purpose except to operate and maintain any Product.

Subject to notification requirements specified in applicable Public Records or Public Meetings laws, City further agrees that Alcatel-Lucent will be provided with Notice, in the event that release of this Agreement or any Confidential Information has been requested. If a public disclosure of Confidential Information is requested. City shall notify Alcatel-Lucent in writing of such request. Alcatel-Lucent may seek a protective order, at its own expense and in a court of competent jurisdiction. City will reasonably cooperate with Alcatel in such action, but is under no obligation to obtain or seek any court protection.

The rights and obligations of City under this Article shall survive the expiration of the term or sooner termination of this Agreement.

XIII. EXPORT CONTROL

The parties agree that each shall not export, re-export or release technology, including confidential information, software object and/or source code, (collectively, "Controlled Technology") which may be subject to either the U.S. Export Administration Regulations (the "EAR") or the Canadian Export and Import Permits Act ("CEIPA"), either directly or indirectly, unless the exporting or re-exporting party has first obtained any required licenses which may be required under the EAR and/or the CEIPA. The parties further agree that each shall not export or re-export either directly or indirectly Controlled Technology under the license exception "TSR" as defined in Part 740 of the EAR to third parties or nationals shown in Supplement 1 of Part 740 who are members of or associated with either Country Group D:1 or Country Group E:2, as amended. Each party shall be solely responsible for obtaining the appropriate licenses required under the EAR and/or the CEIPA.

XIV. DELIVERY AND RISK OF LOSS

Care, custody and control of and risk of loss with respect to the project including responsibility for products and services associated with the scope of work shall remain solely with the Contractor until final acceptance of the project by City.

XV. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and **shall indemnify and save harmless City against any claim related to or arising from the violation of any such laws, ordinances and regulations whether by Contractor, its employees, officers, agents, subcontractors, or representatives.** If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

XVI. ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

**XVII.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XVIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract for the benefit of each of City (naming each City and its officers, agents and employees as additional insureds) insurance coverage as set forth in the Insurance Requirements marked **Exhibit "D"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate for City verifying that the Contractor has obtained the required insurance coverage for City prior to the effective date of this Contract. Insurance Certificates for City are attached as **Exhibit "E"**.

**XIX.
HINDRANCES AND DELAYS**

No claims shall be made by Contractor for damages resulting from hindrances or delays from any cause during the progress of any portion of the work embraced in this Contract.

**XX.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents it is aware of all applicable laws, each City's Charter, and each City's Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest required by City of Plano, as attached and incorporated herein as **Exhibit "F"**.

**XXI.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XXII.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XXIII.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XXIV.
CONTRACT INTERPRETATION**

Although this Contract is drafted by City, should any part be in dispute, the parties agree that the Contract shall not be construed more favorably for either party.

**XXV.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXVI.
NOTICES**

Unless notified otherwise in writing, all notices, including notice of disputes, claims and controversies, are required to be given to the parties in writing and delivered

in person or sent via certified mail to the other parties at the following respective addresses:

Plano Representative:
CITY OF PLANO
Director of Public Safety Communications
1520 K Avenue, Suite 010
Plano Texas 75074
(972) 941-7930

XXVII. IMMUNITY

In the execution of this Agreement, City waives, nor shall be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

XXVIII. DISPUTE RESOLUTION

In the event of a dispute regarding any aspect of this Agreement, the parties shall refer the dispute to outside non-binding mediation for resolution prior to engaging in litigation. All parties shall share equally in the cost of a certified mediator and each party shall be responsible for their own attorney fees.

XXIX. HEADINGS

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

**XXXI.
COUNTERPARTS**

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

**XXXII.
EXHIBITS**

Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

**XXXIII.
SURVIVAL OF COVENANTS**

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

**ALCATEL-LUCENT USA INC., a
Delaware corporation**

DATE: _____

By: _____

Name: _____

Title: _____

Address: _____

CITY OF PLANO, TEXAS

DATE: _____

By: _____

Thomas H. Muehlenbeck
CITY MANAGER
Address: P. O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, _____ of **ALCATEL-LUCENT USA INC.**, a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 20____, by **THOMAS H. MUEHLENBECK**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

Statement of Work is available for review in the City's Radio Shop