



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		04/12/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): <b>Amy Powell X7342</b>				
<b>CAPTION</b>				
To approve a contract for the purchase of a maintenance agreement, for Wireless Mesh Network Devices, in the amount of \$209,950 from Motorola through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08)				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2009-2010</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	876,199	0	<b>876,199</b>
Encumbered/Expended Amount	0	-226,013	0	<b>-226,013</b>
This Item	0	-209,950	0	<b>-209,950</b>
BALANCE	0	<b>440,236</b>	0	<b>440,236</b>
<b>FUND(S):     TECHNOLOGY SERVICES FUND (066.394)</b>				
<p><b>COMMENTS:</b> .Funds for technical support services, maintenance, and monitoring of wireless mesh network devices are included in the 2009-10 Technology Services Budget. This item, in the amount of \$209,950, covers the period of January 1, 2010 through September 30, 2010. The remaining balance will be used throughout the year for other maintenance agreements.</p> <p><b>STRATEGIC PLAN GOAL:</b> Maintenance and service contracts relate to the City's Goal of "Financially Strong City with Service Excellence".</p>				
<b>SUMMARY OF ITEM</b>				
<p>Technology Services recommends Council approve this expenditure, in the amount of \$209,950, for a maintenance agreement with Motorola. This maintenance agreement will allow for technical support services, maintenance and monitoring of Wireless Mesh Network Devices for the period of January 1, 2010 to September 30, 2010. As part of this maintenance contract, Motorola will monitor the network on a 24/7 basis and will maintain the integrity and continuity for this critical infrastructure. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (HGAC Contract No. RA-01-08)</p>				
List of Supporting Documents: Contract and Staff Memo			Other Departments, Boards, Commissions or Agencies	

# Interoffice Memo

Date: 03/10/10

To: David Stephens, Director Technology Services

Cc:

From: Chester M. Helt, Infrastructure Manager

RE: Motorola Maintenance – January 1, 2010 – September 30, 2010

---

We are recommending that the attached maintenance contract for our annual mesh maintenance be approved. This amendment will cover the maintenance for the software required to operate the mesh devices from the month of January 2010 through September 30, 2010. Once this amendment is approved we will have depot repair, technical support, and software maintenance for the mission critical mesh wireless infrastructure. This network will be used by many of our departments (including public safety) to provide critical services for our citizens. As a part of the contract Motorola will monitor the network on 24/7 basis and will maintain the integrity and continuity for this critical infrastructure.

We recommend purchasing this maintenance for a total price of \$209,950.00 from Motorola through their HGAC contract RA-01-08.

**CONTRACT BY AND BETWEEN  
CITY OF PLANO AND MOTOROLA, INC.  
FOR SERVICES FOR WIRELESS MESH NETWORK DEVICES**

**THIS CONTRACT** is made and entered into by and between **MOTOROLA, INC.** whose address is 1301 E. Algonquin Road, Schaumburg, Illinois, 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 execution of this Contract by the Plano City Manager or his duly authorized designee.

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**

Contractor shall provide technical support services, maintenance and monitoring of Wireless Mesh Network Devices. These services shall be provided in accordance with this Contract and with the Houston-Galveston Area Council Contract No. RA-01-08, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Houston-Galveston Area Council Contract No. RA-01-08 on file with the City of Plano Technology Services Department;
- (c) Motorola's Statement of Work (Exhibit "A");
- (d) Insurance Requirements and Certificate of Insurance (Exhibit "B");and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.  
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **TWO HUNDRED NINE THOUSAND NINE HUNDRED FIFTY AND 00/100 DOLLARS (\$209,950.00)**.

**III.  
TERM**

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 30<sup>th</sup> 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.

**IV.  
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Houston-Galveston Area Council Contract No. RA-01-08, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.  
CITY CONTACT**

If requested by Contractor, City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

**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.

**VII.  
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.  
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.  
INDEMNIFICATION AND HOLD HARMLESS**

**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, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), REAL AND PERSONAL TANGIBLE PROPERTY DAMAGE THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S NEGLIGENT ACT GROSSLY NEGLIGENT ACT, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, OR SUBCONTRACTORS WHILE PERFORMING DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE 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, PROVIDED THAT CITY GIVES MOTOROLA PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. CITY SHALL COOPERATE WITH CONTRACTOR IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT. THIS SECTION SETS FORTH THE FULL EXTENT OF CITY'S GENERAL INDEMNIFICATION OF CONTRACTOR FROM LIABILITIES THAT ARE IN ANY WAY RELATED TO CITY'S**

PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL UPON CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN A REASONABLE 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 THE CITY.

**X.**  
**INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT**

CONTRACTOR WILL DEFEND AT ITS EXPENSE ANY SUIT BROUGHT AGAINST CITY TO THE EXTENT IT IS BASED ON A THIRD-PARTY CLAIM ALLEGING THAT THE EQUIPMENT MANUFACTURED BY CONTRACTOR OR THE CONTRACTOR SOFTWARE ("PRODUCT") DIRECTLY INFRINGES A UNITED STATES PATENT OR COPYRIGHT ("INFRINGEMENT CLAIM"). CONTRACTOR'S DUTIES TO DEFEND AND INDEMNIFY ARE CONDITIONED UPON: CITY PROMPTLY NOTIFYING CONTRACTOR IN WRITING OF THE INFRINGEMENT CLAIM; CONTRACTOR HAVING SOLE CONTROL OF THE DEFENSE OF THE SUIT AND ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE; AND CITY PROVIDING TO CONTRACTOR COOPERATION AND, IF REQUESTED BY CONTRACTOR, REASONABLE ASSISTANCE IN THE DEFENSE OF THE INFRINGEMENT CLAIM. IN ADDITION TO CONTRACTOR'S OBLIGATION TO DEFEND, AND SUBJECT TO THE SAME CONDITIONS, CONTRACTOR WILL PAY ALL DAMAGES FINALLY AWARDED AGAINST CITY BY A COURT OF COMPETENT JURISDICTION FOR AN INFRINGEMENT CLAIM OR AGREED TO, IN WRITING, BY CONTRACTOR IN SETTLEMENT OF AN INFRINGEMENT CLAIM. IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR'S OPINION IS LIKELY TO OCCUR, CONTRACTOR MAY AT ITS OPTION AND 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 CREDIT FOR THE PRODUCT. CONTRACTOR 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 CONTRACTOR; (B) THE USE OF ANCILLARY EQUIPMENT OR SOFTWARE NOT FURNISHED BY MOTOROLA AND THAT IS ATTACHED TO OR USED IN CONNECTION WITH THE PRODUCT; (C) PRODUCT DESIGNED OR MANUFACTURED IN ACCORDANCE WITH CITY'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 CONTRACTOR; (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 CITY TO INSTALL AN ENHANCEMENT RELEASE TO THE CONTRACTOR SOFTWARE THAT IS INTENDED TO CORRECT THE CLAIMED INFRINGEMENT. IN NO EVENT WILL CONTRACTOR'S LIABILITY RESULTING FROM ITS INDEMNITY OBLIGATION TO CITY EXTEND IN ANY WAY TO ROYALTIES PAYABLE ON A PER USE BASIS OR THE CITY'S REVENUES, OR ANY ROYALTY BASIS OTHER THAN A REASONABLE ROYALTY BASED UPON REVENUE DERIVED BY CONTRACTOR FROM CITY FROM SALES OR LICENSE OF THE INFRINGING PRODUCT. THIS SECTION PROVIDES CITY'S SOLE AND EXCLUSIVE REMEDIES AND CONTRACTOR'S ENTIRE LIABILITY IN THE EVENT OF AN INFRINGEMENT CLAIM.

**XI.  
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XII.  
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor affiliate. An assignment of this Contract with the consent of the City or to an affiliate of Contractor is conditioned on the assignee agreeing to be bound by the terms of this Contract. Contractor may subcontract any portion of its performance under this Contract. 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. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XIII.  
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.

**XIV.**  
**INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in Exhibit "B" including the City as a named insured.

**XV.**  
**FORCE MAJUERE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XVI.**  
**AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City 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, attached and incorporated herein as Exhibit "C."

**XVII.**  
**TERMINATION FOR CAUSE**

If either party defaults in the performance of this Contract, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Contract effective upon giving a written notice of termination to the defaulting party.

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

#### **XVIII. 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.

#### **XIX. TERMINATION FOR CONVENIENCE**

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 sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

#### **XX. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Contract will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such

information or data itself for any purpose other than performing its obligations under this Contract. The obligations set forth in this Section will survive the expiration or termination of this Contract.

**XXI.  
MAILING OF NOTICES**

Unless instructed otherwise in writing, Contractor agrees that all notices or communications to City permitted or required under this Contract shall be addressed to City at the following address:

City of Plano  
Technology Services  
P.O. Box 860358  
Plano, Texas 75086-0358  
Attn: David Stephens

City agrees that all notices or communications to Contractor permitted or required under this Contract shall be addressed to Contractor at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

**XXII.  
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.

City agrees to reference this Contract and The Houston-Galveston Area Council Contract No. RA-01-08 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to

this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXIII.  
SUCCESSORS AND ASSIGNS**

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

**XXIV.  
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.

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

**MOTOROLA, INC.**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of **MOTOROLA, INC.** a \_\_\_\_\_ corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**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 corporation.

\_\_\_\_\_  
Notary Public, State of Texas



# SERVICE AGREEMENT

Attn: National Service Support/4th fl  
 1301 East Algonquin Road  
 Schaumburg, IL 60196  
 (800) 247-2346

Contract Number: S00001012950  
 Contract Modifier: RN07-JAN-10 13:21:41  
 Supercedes Agreement(s):

Date: 02/09/2010

Company Name: Plano, City Of
Attn:
Billing Address: P O Box 860279
City, State, Zip: Plano, TX 75086-0279
Customer Contact: Chester Helt
Phone: (972)941-7626
Fax:

Required P.O.: Yes  
 Customer #: 1011267912  
 Bill to Tag #: 0006  
 Contract Start Date: 01/01/2010  
 Contract End Date: 10/31/2010  
 Anniversary Day: Dec 31st  
 Payment Cycle: MONTHLY  
 Tax Exempt: Exempt From All Taxes  
 PO #: TBD

Qty	Model/Option	Description	Monthly Ext	Extended
1269	SVC01SVC0084A	***** Recurring Services ***** RNS TECH/SW SUPPORT	\$ 20,995.00	\$ 209,950.00
176	SVC073AE	RNS MESH MWR		
1	SVC072AE	RNS MESH IAP		
	SVC077AE	RNS MESH MISC		

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - Recurring Services	\$ 20,995.00	\$ 209,950.00
	Subtotal - One-Time Event Services	\$ .00	\$ .00
	Total	\$20,995.00	\$209,950.00
	Taxes	-	-
	Grand Total	\$ 20,995.00	\$ 209,950.00

Plano MESH Service from Jan through Oct 2010. HGAC Contract RA-01-08

THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE. TO BE VERIFIED BY MOTOROLA.

Subcontractor(s)	City	State
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
<i>John Martin</i>	Service Manager	2/10/2010
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
<i>John Martin</i>	972-277 4608	
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX



## Service Terms and Conditions

Motorola, Inc., ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola agrees to provide to Customer either (1) maintenance, support and/or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions will take precedence over any cover page, and the cover page will take precedence over any attachments, unless the cover page or attachment specifically states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement will become binding only when accepted in writing by Motorola. The term of this Agreement will begin on the "Start Date" indicated in this Agreement.

### Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for such services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for such additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for such Equipment will terminate at the end of the month in which Motorola receives such written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to such Equipment; remove such Equipment from the Agreement; or increase the price to Service such Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

### Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no

obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

#### **Section 6 TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for such charges and expenses.

#### **Section 7 CUSTOMER CONTACT**

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

#### **Section 8 PAYMENT**

Unless alternative payment terms are specifically stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer agrees to reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

#### **Section 9 WARRANTY**

Motorola warrants that its Services under this Agreement 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. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **Section 10 DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

#### **Section 11 LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA 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 OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

#### **Section 12 EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of

this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

### **Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

### **Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

### **Section 15 COVENANT NOT TO EMPLOY**

~~During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.~~

*Deleted by Motorola 4/1/2010  
JMM*

### **Section 16 MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to such property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

### **Section 17 GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

17.6. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS

THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.7. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
02/10/2010

**PRODUCER**

AON RISK SERVICES CENTRAL, INC.  
CHICAGO IL OFFICE  
1000 NORTH MILWAUKEE AVENUE  
GLENVIEW, ILLINOIS 60025  
ATTN: INSURANCE VERIFICATION CENTER  
PH: 1-800-4-VERIFY/ FAX: 1-847-953-5341

Serial # 0617

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**COMPANIES AFFORDING COVERAGE**

- COMPANY A LIBERTY MUTUAL FIRE INSURANCE COMPANY
- COMPANY B LIBERTY INSURANCE CORPORATION
- COMPANY C
- COMPANY D

**INSURED**

MOTOROLA INC. AND ITS SUBSIDIARIES  
1303 EAST ALGONQUIN ROAD  
SCHAUMBURG IL 60196 USA

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	TB2-641-005169-079	7/1/2009	7/1/2010	GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COM/OP AGG \$ INCLUDED PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 250,000 MED EXP (Any one person) \$ 10,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	AS2-641-005169-019	7/1/2009	7/1/2010	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	<b>WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY</b> B THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	WA7-640-005169-089 (ALL OTHER STATES) WC7-641-005169-099 (OR & WI)	7/1/2009	7/1/2010	<input checked="" type="checkbox"/> WE STATE/ TOP LIMITS EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
 RE: 05-13276/RES MESH 4.0 NETWORK. CITY OF PLANO, TX IS LISTED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY AND WORK PERFORMED BY MOTOROLA UNDER CONTRACT. WAIVER OF SUBROGATION IS INCLUDED ON THE WORKERS' COMPENSATION POLICY.

**CERTIFICATE HOLDER**

CITY OF PLANO, TEXAS  
ATTN: DAVID STEPHENS  
TECHNOLOGY SERVICES  
1117 EAST 15TH STREET  
PLANO TX 75074 USA

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

ACORD 25-S (1/95)

**RECEIVED**  
FEB 18 2010  
BY: \_\_\_\_\_

© ACORD CORPORATION 1988

EXHIBIT B  
PAGE 1 OF 1

AFFIDAVIT OF NO PROHIBITED INTEREST

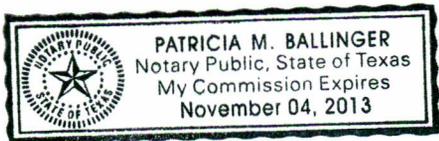
I, the undersigned declare and affirm that no person or officer of \_\_\_\_\_ (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

By: Motorola  
Name of Contractor  
John Martin  
Signature  
John Martin  
Print Name  
Service Manager  
Title  
4/1/2010  
Date

STATE OF Texas §  
COUNTY OF Dallas §  
§

SUBSCRIBED AND SWORN TO before me this 1st day of April, 2010.



Patricia M. Ballinger  
Notary Public, State of Texas