



**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:		12/20/11		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an annual maintenance contract by and between the City of Plano and Motorola Solutions, Inc., the sole source provider for depot repairs, and technical support for the City of Plano's MESH data devices; 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 checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	800,000	0	800,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-300,000	0	-300,000
BALANCE	0	500,000	0	500,000
FUND(S): TECHNOLOGY SERVICES FUND (066)				
<p>COMMENTS: Funds for technical support services, maintenance, and monitoring of wireless mesh network devices are included in the 2011-12 Technology Services Budget. This item, in the amount of \$300,000, covers the period of November 1, 2011 through October 31, 2012. The remaining balance will be used throughout the year for other maintenance agreements.</p>				
<p>STRATEGIC PLAN GOAL: Maintenance and service contracts relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Technology Services recommends Council approve this Resolution, in the amount of \$300,000, for a maintenance agreement with sole source vendor, Motorola Solutions, Inc. This maintenance agreement will allow for technical support services, maintenance and monitoring of Wireless Mesh Network Devices for the period of November 1, 2011 through October 31, 2012. As part of this maintenance agreement, Motorola will monitor the network on a 24/7 basis and will maintain the integrity and continuity for this critical infrastructure.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Resolution, Staff Memo and Contract				

Interoffice Memo

Date: 12/7/2011
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Motorola Maintenance – 11/01/2011 – 10/31/2012

We are recommending that the attached maintenance contract for our annual mesh maintenance be approved. This contract will cover the maintenance for the software required to operate the mesh devices from the month of November 2011 through October 31, 2012. Once this contract 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.

Motorola Solutions, Inc., is the manufacturer of the hardware and software used in our wireless mesh network. Attached is a name brand justification memo dated 2/16/2010 to Mike Ryan regarding using Motorola and Scientel Wireless LLC as sole suppliers of support for this wireless mesh network.

This maintenance is necessary to maintain the support for the wireless network that supports Public Safety and many other city departments. Without the support contract the network would be at risk for failure due to software or hardware issues. The time to repair the failed device may cause extensive outages on this critical infrastructure.

We recommend purchasing this maintenance for a total price of \$ 300,000.00 from sole source vendor, Motorola Solutions, Inc.

Date: February 16, 2010
To: Mike Ryan, Purchasing
From: David Stephens, Director Technology Services
Subject: Name Brand Justification

As we undergo the final phase of our wireless mesh network deployment, we have existing contracts in place with Motorola for installation of this equipment. Motorola has have been using Scientel Wireless, LLC as the designated sub-contractor for the design and installation of this network. As sections of the network have been accepted we have relied upon Motorola and Scientel to provide the support for the network in production, as well as being responsible for the support of the new phases under construction.

It would be in the interest of the City of Plano to continue using Motorola and Scientel Wireless, LLC for maintenance of this network due to the complexity of the network; the ability to have a single responsible party for any issues, such as firmware upgrades; and their in-depth knowledge of our existing infrastructure. Bringing in a new vendor for maintenance for portions of this network at this time would increase the likelihood of a failure of the network with an ensuing disagreement over responsibility for restoring service to a critical infrastructure used on continuous basis by Public Safety and other city services.

This project has been segmented into three phases. The City has accepted phases 1 & 2 but Motorola, and Scientel, are still working on phase 3. As we move into maintenance mode on phases 1 & 2, the current contracts have been with Motorola as prime contractor with Scientel as the sub-contractor. It is the desire of Technology Services to be able to utilize Motorola and/or Scientel for support on the production phases of this project. Both Motorola and Scientel are on HGAC and DIR contracts for services that are within our scope of required services.

At this time Technology Services is requesting to maintain the relationship with Motorola and Scientel as sole support providers for the wireless mesh network until its completion. To accomplish this I am requesting that Motorola and Scientel Wireless, LLC be accepted as name brand justification vendors for support purposes for the duration of the wireless mesh network project.

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an annual maintenance contract by and between the City of Plano and Motorola Solutions, Inc., the sole source provider for depot repairs, and technical support for the City of Plano's MESH data devices; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Technology Services Department of the City of Plano utilizes the wireless mesh network designed and manufactured by Motorola Solutions, Inc.; and

WHEREAS, Motorola Solutions, Inc. is the sole source provider for depot repairs, and technical support for the City of Plano's MESH data devices utilized by Public Safety and other city departments; and

WHEREAS, the City Council has been presented a proposed Annual Maintenance Contract between the City of Plano and Motorola Solutions, Inc. for MESH Network Devices, 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 Agreement should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS THAT:

Section I. The City Council hereby finds and determines that Motorola Solutions, Inc. is the sole source provider for depot repairs, and technical support for the City of Plano's MESH data devices and, thus, the purchase of such MESH Network Devices is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section II. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section III. The City Manager, or his/her 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 IV. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 20th day of December, 2011.

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 MOTOROLA SOLUTIONS, INC.
FOR ANNUAL MAINTENANCE OF MESH NETWORK DEVICES**

THIS CONTRACT is made and entered into by and between **MOTOROLA SOLUTIONS, INC.**, a Delaware corporation, whose address is 1303 Algonquin Road, Schaumburg, Illinois 60196, 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.

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 depot repair, technical support, and software maintenance for the City's mesh wireless infrastructure. These products and services shall be provided in accordance with the Contractor's Scope of Services, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Contractor's Scope of Services (**Exhibit "A"**);
- (b) Insurance Requirements and Certificate of Insurance (**Exhibit "B"**); and
- (c) Affidavit of No Prohibited Interest (**Exhibit "C"**).

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 this 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.
TERM OF CONTRACT**

The term of this Contract shall be a period of one (1) year commencing November 1, 2011 and ending on October 31, 2012.

**III.
WARRANTY**

Contractor warrants for the one (1) year term of the Contract that all technical support services performed under this Contract will be performed in a skillful and workmanlike manner and free from defects. Contractor warrants that each depot service repair performed under this Contract will be free of defects in materials and workmanship for a period of ninety (90) days

from the date the repair is completed. In the event of a breach of this warranty, City's sole remedy is to require Contractor to re-perform the non-conforming service or to refund, on a pro-rata basis, the fees paid for the non-conforming service. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IV. 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 annual compensation under this contract shall not exceed the sum of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)**.

Contractor recognizes that this Contract shall commence November 1, 2011 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. The City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of the contract and will pay to Contractor all approved charges incurred through the end of the contract.

V. RISK OF LOSS

Contractor shall assume risk of loss to City owned property while such property is in the possession of Contractor. City shall assume risk of loss to City owned property that is in transit from City representative to Contractor's repair facility and in transit from Contractor's repair facility to City's representative.

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.

VII. 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, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, 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 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 NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION 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 THE CITY GIVES CONTRACTOR WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT IN A TIMEFRAME THAT DOES NOT JEOPARDIZE CONTRACTOR'S ABILITY TO DEFEND. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT CITY'S EXPENSE; 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. NOTWITHSTANDING THE FOREGOING, IF CONTRACTOR IS PROVIDING THE REQUIRED DEFENSE AND THE CITY ELECTS TO PROVIDE, OR CONTINUE TO PROVIDE, A PORTION OR ALL OF ITS DEFENSE IN ADDITION TO CONTRACTOR PROVIDING THE REQUIRED DEFENSE, THE CITY WILL BE RESPONSIBLE FOR THE CITY'S OWN COSTS OF DEFENSE DURING SUCH TIME AS CONTRACTOR IS PROVIDING THE REQUIRED DEFENSE. 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 THE CITY UNTIL SUCH TIME AS THE CONTRACTOR ASSUMES DEFENSE OF THE CLAIM.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

**VIII.
INDEMNIFICATION 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 INFRINGES UPON THE THIRD PARTY'S UNITED STATES PATENT OR COPYRIGHT (AN "INFRINGEMENT CLAIM"), AND CONTRACTOR WILL INDEMNIFY CITY FOR THOSE COSTS AND DAMAGES FINALLY AWARDED AGAINST CITY FOR AN INFRINGEMENT CLAIM. CONTRACTOR'S DUTIES TO DEFEND AND INDEMNIFY ARE CONDITIONED UPON: CITY NOTIFYING CONTRACTOR IN WRITING OF THE INFRINGEMENT CLAIM IN A TIMEFRAME THAT DOES NOT JEOPARDIZE CONTRACTOR'S ABILITY TO DEFEND; 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, DOCUMENTS AND INFORMATION IN THE DEFENSE OF THE INFRINGEMENT CLAIM.

IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR'S OPINION IS LIKELY TO OCCUR, CONTRACTOR MAY AT ITS OPTION AND EXPENSE PROCURE FOR CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT OR CONTRACTOR SOFTWARE, REPLACE OR MODIFY IT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE, OR GRANT CITY A CREDIT FOR THE EQUIPMENT OR CONTRACTOR SOFTWARE AS DEPRECIATED AND ACCEPT ITS RETURN. THE DEPRECIATION AMOUNT WILL BE CALCULATED BASED UPON GENERALLY ACCEPTED ACCOUNTING STANDARDS FOR SUCH EQUIPMENT AND CONTRACTOR SOFTWARE.

CONTRACTOR WILL HAVE NO DUTY TO DEFEND OR INDEMNIFY FOR ANY INFRINGEMENT CLAIM THAT IS BASED UPON THE COMBINATION OF THE EQUIPMENT OR CONTRACTOR SOFTWARE WITH ANY SOFTWARE, APPARATUS OR DEVICE NOT FURNISHED BY CONTRACTOR; THE USE OF ANCILLARY EQUIPMENT OR SOFTWARE NOT FURNISHED BY CONTRACTOR AND THAT IS ATTACHED TO OR USED IN CONNECTION WITH THE EQUIPMENT OR CONTRACTOR SOFTWARE; ANY EQUIPMENT THAT IS NOT CONTRACTOR'S DESIGN OR FORMULA; A MODIFICATION OF THE CONTRACTOR SOFTWARE BY A PARTY OTHER THAN CONTRACTOR; OR THE FAILURE BY CITY TO INSTALL AN ENHANCEMENT RELEASE TO THE CONTRACTOR SOFTWARE THAT IS INTENDED TO CORRECT THE CLAIMED INFRINGEMENT. THE FOREGOING STATES THE ENTIRE LIABILITY OF CONTRACTOR WITH RESPECT TO INFRINGEMENT OF PATENTS AND COPYRIGHTS BY THE EQUIPMENT, CONTRACTOR SOFTWARE, OR ANY OF THEIR PARTS.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

IX.
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. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

X.
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.

XI.
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. City shall not assign this Contract or any of its rights or obligations hereunder without the prior written consent of the Contractor, which consent will not be unreasonably withheld.

XII.
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.

XIII.
INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor shall provide an executed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

XIV.

HINDRANCES AND DELAYS

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

XV. AFFIDAVIT OF NO PROHIBITED INTEREST

Contractor acknowledges and represents it 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"**.

XVI. 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.

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. The defaulting party will have thirty (30) days 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 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. TERMINATION FOR CONVENIENCE

City may, at its option, 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 thirty (30) days prior written notice thereof to Contractor with the understanding that the services being terminated shall cease upon the expiration of the 30-day period.

The notice must explicitly state the effective date of the termination and whether the contract termination is in whole or in part, and if in part, which part is being terminated. If City exercises this right to terminate for convenience, it will be liable to pay Contractor for terminated services up to the effective date of their termination.

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.

**XIX.
ENTIRE AGREEMENT**

This Contract and its attachments supersede all prior and concurrent contracts, purchase orders and understandings between the parties, whether written or oral, related to the services, embodies the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XX.
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.

**XXI.
SUCCESSORS AND ASSIGNS**

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

**XXII.
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:

Motorola Solutions, Inc.
Park West C-2
1507 LBJ Freeway

Farmers Branch, Texas 75234
Attn: John Martin, Service Manager

Notices required under this Contract to be given by one party to the other must be in writing and either personally delivered or sent to the address shown above by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

**XXIII.
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto.

**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.

**XXV.
LIMITATION OF LIABILITY**

Except for personal injury or death, Contractor'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 Contract. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR 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 CONTRACT OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS CONTRACT.** This limitation of liability will survive the expiration or termination of this Contract and applies notwithstanding any contrary provision.

**XXVI.
WAIVER**

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

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

MOTOROLA SOLUTIONS, INC.

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY



City of Plano – MOTOMESH Statement of Work

Infrastructure Repair of MESH Data Devices

1.0 Description of Services

Infrastructure Repair is a repair service for Motorola and select third party Infrastructure. Infrastructure may be repaired down to the Component level, as applicable, at the Motorola Infrastructure Depot Operations (IDO). At Motorola's discretion, select third party Infrastructure may be sent to the original equipment manufacturer or third party vendor for repair. If Infrastructure is no longer supported by the original equipment manufacturer or third party vendor, Motorola may replace Infrastructure with similar Infrastructure, when possible.

2.0 Motorola has the following responsibilities:

- 2.1. Provide repair return authorizations when requested by Plano or Scientel.
- 2.2. Receive malfunctioning Infrastructure from Customer and documents its arrival, repair and return.
- 2.3. Perform the following service on Motorola Infrastructure:
 - 2.3.1. Perform an operational check on the Infrastructure to determine the nature of the problem.
 - 2.3.2. Replace the malfunctioning FRU or Components.
 - 2.3.3. Verify that Motorola Infrastructure is returned to Motorola manufactured specifications, as applicable
 - 2.3.4 Perform a Box Unit Test on all serviced Infrastructure.
 - 2.3.5 Perform a System Test on select Infrastructure.
- 2.4. Provide the following service on select third party Infrastructure:
 - 2.4.1 Perform pre-diagnostic and repair services to confirm Infrastructure malfunction and eliminate sending Infrastructure with no trouble found (NTF) to third party vendor for repair, when applicable.
 - 2.4.2 Ship malfunctioning Infrastructure to the original equipment manufacturer or third party vendor for repair service, when applicable.
 - 2.4.3 Track Infrastructure sent to the original equipment manufacturer or third party vendor for service.
 - 2.4.4 Perform a post-test after repair by Motorola, original equipment manufacturer, or third party vendor to confirm malfunctioning Infrastructure has been repaired and functions properly in a Motorola System configuration.
- 2.5. Re-program repaired Infrastructure to original operating parameters based on templates provided by Customer as required by Section 3.3. If customer template is not provided or is not reasonably usable, a standard default template will be used. If IDO determines that the malfunctioning Infrastructure is due to a Software defect, IDO reserves the right to reload Infrastructure with a similar Software version. Enhancement Release (s), if needed, is subject to additional charges to be paid by Customer unless the Customer has a Motorola Software Subscription agreement.
- 2.6. Properly package repaired Infrastructure.
- 2.7. Ship repaired Infrastructure to the Plano specified address during normal operating hours of Monday through Friday 7:00am to 7:00pm CST, excluding holidays.

3.0 Plano/Scientel has the following responsibilities:

- 3.1. Contact or instruct Scientel to contact the Motorola System Support Center (SSC) and request a return authorization number prior to shipping malfunctioning Infrastructure or third party Infrastructure named in the applicable attached Exhibit.
 - 3.1.1. Provide model description, model number, serial number, type of System and Firmware version, symptom of problem and address of site location for FRU or Infrastructure.



- 3.1.2. Indicate if Infrastructure or third party Infrastructure being sent in for service was subjected to physical damage or lightning damage.
- 3.1.3. Follow Motorola instructions regarding inclusion or removal of Firmware and Software applications from Infrastructure being sent in for service.
- 3.1.4. Provide Customer purchase order number to secure payment for any costs described herein.
- 3.2 Properly package Infrastructure and ship the malfunctioning FRU, at Customer's expense and risk of loss to Motorola. Customer/Scientel is responsible for properly packaging the Customer malfunctioning Infrastructure FRU to ensure that the shipped Infrastructure arrives un-damaged and in repairable condition. Clearly print the return authorization number on the outside packaging.
- 3.3 Maintain templates of Software/applications and Firmware for reloading of Infrastructure as set forth in paragraph 2.3 and 2.9.
- 3.4 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Infrastructure Repair services to Customer.
- 4.0 In addition to any exclusions named in Section 5 of the Service Terms and Conditions or in any other underlying Agreement to which this SOW is attached, the following items are excluded from Infrastructure Repair:
 - 1. All Infrastructure over seven (7) years from product cancellation date.
 - 2. Physically damaged Infrastructure.
 - 3. Third party Equipment not shipped by Motorola.
 - 4. Consumable items including, but not limited to, batteries, connectors, cables, tone/ink cartridges.
 - 5. Test equipment.
 - 6. Racks, furniture and cabinets.
 - 7. Firmware and/or Software upgrades.

Technical Support for MESH System

- 1.0 Technical Support provides the City of Plano answers to their technical issues on the MESH system. Motorola will provide Technical Support 24x7, 365 days per year.
- 2.0 This Motorola operation is staffed with technologists who specialize in the diagnosis and resolution of system performance issues by telephone. A case is created on each issue and is followed to resolution, with escalation if necessary. Because of the Center's proximity to the factory engineers, the highest level of technical support is available. The City of Plano is required to provide remote connection to its Orion Network Monitoring System via Netmotion Remote Client VPN connection and to the rest of the Motorola Mesh network to facilitate effective support and troubleshooting capabilities.



SERVICES AGREEMENT

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

Contract Number: S00001012950
 Contract Modifier: RN02-AUG-11 08:26:46

Date: 10/24/2011

Company Name: Plano, City Of Attn: Billing Address: P O Box 860279 City, State, Zip: Plano, TX, 75086 Customer Contact: Chester Helt Phone: (972)941-7626
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Required P.O.: Yes
 Customer # : 1011267912
 Bill to Tag # : 0006
 Contract Start Date: 11/01/2011
 Contract End Date: 10/31/2012
 Anniversary Day: Oct 31st
 Payment Cycle: MONTHLY
 PO # : TBD

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
176	SVC01SVC1101C	INFRASTRUCTURE REPAIR WITH ADV REPL		
1269	SVC096AE	MESH IAP		
	SVC097AE	MESH MWR		
1	SVC101AE	MESH MISC		
1	SVC455AF	ENH: SITE		
	SVC01SVC1104C	TECHNICAL SUPPORT SERVICE		
1	SVC077AE	MESH MISC		
1	SVC455AF	ENH: SITE		
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			Subtotal - Recurring Services	\$25,000.00
			Subtotal - One-Time Event Services	\$.00
			Total	\$25,000.00
Plano MESH Service from Nov 1, 2011 through Oct 31, 2012.			Taxes	-
			Grand Total	\$25,000.00
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 CENTER			ELGIN	IL
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068			SCHAUMBU RG	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 _____

CUSTOMER (PRINT NAME) _____

EXHIBIT A
 PAGE 3 OF 4

John Martin Service Manager 10/24/2011
MOTOROLA REPRESENTATIVE(SIGNATURE) TITLE DATE
John Martin 214-681-6515
MOTOROLA REPRESENTATIVE(PRINT NAME) PHONE

Company Name: Plano, City Of
Contract Number: S00001012950
Contract Modifier: RN02-AUG-11 08:26:46
Contract Start Date: 11/01/2011
Contract End Date: 10/31/2012

INSURANCE REQUIREMENTS

10 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of similar type specified, per their contract requirements with Contractor and scope of work with regard to this project.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
 - 1.5.1 Be on a primary basis with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must maintain insurance per their contract requirements with Contractor and scope of work with regard to this project.

2.0 Minimum Insurance Coverage & Limits

21 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10.**

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

2.1.3.2 \$1,000,000 Personal/Advertising Injury

2.1.3.3 \$4,000,000 General Aggregate, including
Products/Completed Operations

22 Business Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

23 Workers' Compensation & Employer Liability. Contractor shall maintain workers' compensation insurance in amounts required by appropriate state statute. The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

2.3.1 Contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under contractor's workers' compensation and employers liability or commercial umbrella liability insurance. Contractor must cause a **waiver of subrogation** to be effected under its workers' compensation coverage using endorsement WC 00 03 13.

3.0 Evidence of Insurance

3.1 Upon a fully executed contract or prior to commencement of work, and thereafter upon renewal or replacement of

coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of blanket CG 20 10 and WC 00 0313 blanket endorsements and cancellation endorsements to insurance policies as required by each section herein to the City**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

33 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

35 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section upon a fully executed contract or prior to commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

3.5.2 List **contract number, project name/number**, name of event, location (building name, building address, etc.), date(s) of event or service being performed

3.5.3 State insurance is on a primary basis with any insurance/or self-insurance carried by City

3.5.4 Specifically list reference to all blanket endorsements required herein

3.5.5 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section. Notice of 30 day Cancellation endorsement shall also be listed in description section.

