

AMENDMENT NO. 2

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND MOTOROLA, INC.

THIS AMENDMENT NO. 2 TO THE AGREEMENT, entered into this _____ day of _____, 2011, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and MOTOROLA, INC., hereinafter called "Contractor";

WITNESSETH:

***WHEREAS**, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and*

***WHEREAS**, the parties entered into an Agreement for the purpose of designing, building and implementing/migrating an ANSI/EIA/TIA-102 compliant P25/700MHz Interoperable Radio Communications System (SMIRC) on April 27, 2010, as amended on September 14, 2010; and*

***WHEREAS**, the parties wish to amend the Agreement to add up to \$14,735,094, for a new total maximum fiscal obligation of \$20,000,000 contingent upon the County obtaining funding.*

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Section 1, **Exhibits and Attachments**, of the Agreement is hereby amended to read as follows:

1. **Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A - Services

A-1 Statement of Work

A-2 System Design Description

A-3 Acceptance Test Plan

A-4 Performance Schedule

A-5 Enhanced System Support Statement of Work

Exhibit B - Payment Schedule and Pricing Summary (**Revised December 2010**)

Appendix 1 - Software License Agreement

Appendix 2 - Master Purchase Agreement

2. Section 2, **Services to be performed by Contractor**, of the Agreement is hereby amended to read as follows:

2. **Services to be performed by Contractor**

In consideration of the payments set forth herein, in Exhibit "B," and in each change order issued pursuant to the requirements of Section 3, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein, in Exhibit "A," and in each such change order.

3. Section 3, **Payments**, of the Agreement is amended to read as follows:

3. **Payments**

On September 14, 2010, the parties by way of Amendment No. 1 expanded the scope of equipment and services to be provided under the Agreement (the "Revised Initial Services") and increased the total maximum fiscal obligation under this Agreement to FIVE MILLION TWO HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED SIX DOLLARS (\$5,264,906). Funds in the form of grants, other outside funding, and County-provided funding were anticipated to be secured to cover the cost of the Revised Initial Services up to this amount (the "Revised Initial Funding"). Thereafter, the parties agreed to increase the potential maximum fiscal obligation of this Agreement to cover additional work (equipment and services) not included in the Revised Initial Services and not paid for by the Revised Initial Funding, contingent upon all such additional work beyond the Revised Initial Services being funded either from (1) grants or other outside sources not originating from the County (the "Additional Outside Funding") and/or (2) Additional Outside Funding with the addition of matching funding from the County and/or radio-system users (the "Additional County-Match Funding"). The total cost of equipment and/or services to be provided under this Agreement, including Revised Initial Funding, Additional Outside Funding, and Additional County-Match Funding, shall not exceed TWENTY MILLION DOLLARS (\$20,000,000) and is subject to the requirements of this Section.

For any equipment or services requested beyond the Revised Initial Services, such equipment and/or services ("Expanded Services") shall be provided and payment shall be made only when all of the following conditions are met: (1) County and Contractor shall enter a written change order in advance of any such Expanded Services pursuant to the authority granted to the Sheriff by the County Board of Supervisors; (2) full funding for all Expanded Services described by each written change order must be secured in advance as outlined in the change order relating to those Expanded Services; (3) each written change order must include a list of the costs associated with each aspect of said change order (including contingencies, if any), and this change order-specific not-to-exceed amount shall set the limit for the County's financial obligation to the Contractor for the Expanded Services provided under that change order. **In no event shall the**

County have any obligation to pay Contractor for such Expanded Services under a given change order beyond the not-to-exceed amount included in that specific change order, even if other change orders described by this section have not yet met their not-to-exceed amount.

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein, in Exhibit "A" and/or in any change orders issued in accordance with this Section, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B" and/or any such change orders subject to the limitations of this Section. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed TWENTY MILLION DOLLARS (\$20,000,000).

4. Exhibit B - Payment Schedule and Pricing Summary (Revised September 2010) to the Agreement is replaced with Exhibit B – Payment Schedule and Pricing Summary (Revised December 2010), attached hereto and incorporated into the Agreement.
5. All other terms and conditions of the agreement dated April 27, 2010, as amended on September 14, 2010, between the County and Contractor shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors,
County of San Mateo

Date: _____

ATTEST:

By: _____
Clerk of Said Board

MOTOROLA, INC.

By: _____
SIGNATURE

Date: _____

EXHIBIT B
PAYMENT SCHEDULE AND PRICING SUMMARY
 (Revised December 2010)

**AGREEMENT BETWEEN COUNTY OF SAN MATEO
 AND MOTOROLA, INC.**

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. PAYMENT SCHEDULE.

A. For the Revised Initial Services, as defined in Section 3 of the Agreement (as amended), County will make payment to Contractor according to the following payment schedule:

- 10% Upon Completion of the Contract for the Revised Initial Services
- 50% Upon Delivery of Equipment for the Revised Initial Services
- 20% Upon Completion of Installation of the Revised Initial Services
- 5% Upon Completion of the Acceptance Testing Plan (ATP) for the Revised Initial Services
- 15% Upon Final Acceptance of the Revised Initial Services

Payment terms are per the contract.

Hardware (P25 System and Master Site)	\$2,979,346
Services (P25 Services and Master Site)	\$604,374
System Integration Services	\$1,768,222
System Discount (@10%)	(\$527,054)
Tax (@ 9.25%)	\$226,769.15
Shipping	\$53,751.56
County Contingency for Additional Work (as requested and approved in writing by the County)	\$159,497
TOTAL	\$5,264,906

1) Effective September 2010, Rolph Hill payment terms are as follows:

- 10% Upon full execution of Amendment No. 1
- 50% Upon Delivery of Equipment
- 20% Upon Completion of Installation
- 5% Upon Completion of the Acceptance Testing Plan (ATP)
- 15% Upon Final Acceptance

For the Simulcast Optimization and Backup Dispatch Equipment, payment will be due 30 days from delivery of equipment and upon invoice.

Simulcast Optimization and Backup Dispatch Equipment:

Hardware	\$81,407
Tax	\$7,530.15
Shipping	\$610.56
Total	\$89,547.71

2) The \$159,496 for the Contingency listed above may not be billed by Contractor prior to written agreement from the County that additional work is to be performed under this Agreement as directed by the County in advance. Absent such advance written agreement, Contractor is not entitled to any payment for such additional work.

B. For Expanded Services, as defined in Section 3 of the Agreement (as amended), County will make payment to Contractor based on the specific change order and according to the following payment schedule:

- 10% Upon Execution of the change order
- 50% Upon Delivery of Equipment outlined by the change order
- 20% Upon Completion of Installation outlined by the change order
- 5% Upon Completion of the Acceptance Testing Plan (ATP)
- 15% Upon Final Acceptance of the work outlined by the change order

Payment terms for work under the change order are per the contract.

Each such change order must include a table breaking out the costs associated with the change order (including, as appropriate, but not limited to items like hardware, services, discount, tax, shipping, and contingency). In addition, each such change order must include a not-to-exceed amount for work under that change order and identification of the funding sources for said work. Under no circumstances will Contractor be paid for services provided under a specific change order beyond the not-to-exceed amount in that change order.

C. Unless alternative payment terms are stated, Contractor will invoice the County, in advance, for each payment period. All other charges will be billed monthly. The County will submit payment within thirty (30) days of receipt of invoice upon the approval of work performed during the billing cycle.

D. Each invoice will include the following:

- Agreement Number

- Purchase Order Number
 - Actual Services performed/hardware provided, amount billed and amount billed in total
 - The net amount for which payment is due
- E.** Contractor will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to the County upon delivery to County's site (FOB Destination). Title to Software will not pass to the County at any time. Contractor will pack and ship all Equipment in accordance with good commercial practices.
- F.** The Agreement price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by the County except as exempt by law. If Contractor is required to pay any of these taxes, Contractor will send an invoice to the County and the County will pay to Contractor the amount of the taxes within 30 days after the date of the invoice.
- G.** In no event shall total payment under this Agreement exceed **TWENTY MILLION DOLLARS (\$20,000,000)**, and all payments are subject to the conditions of Section 3 of the Agreement. The County will have the right to withhold payment if the County determines that the quantity or quality of work performed is unacceptable.
- H.** Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.
- I.** Any Contingencies may not be billed by Contractor prior to written agreement from the County that additional work is to be performed under this Agreement as directed by the County in advance. Absent such advance written agreement, Contractor is not entitled to any payment for such additional work.