

RESOLUTION NO. 2011- 376

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT FOR TOWERS AND RADIO SYSTEM.

RECITALS

WHEREAS, St. Johns County issued RFP 11-84, Towers and Radio System and ranked respondent Motorola Solutions, Inc. as the highest qualified respondent; and

WHEREAS, on December 6, 2011, the Board of County Commissioners ("Board") authorized the County Administrator, or designee, to negotiate with Motorola Solutions, Inc. a proposed agreement for completion of the work subject to final approval by the Board; and

WHEREAS, the Board has reviewed the terms, provisions, conditions and requirements of the draft contract agreement, attached hereto and incorporated herein, and finds that entering into such a contract agreement serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The County Administrator, or designee, is hereby authorized to enter into a contract agreement with Motorola Solutions, Inc. in substantially the same form and format as the draft contract agreement attached hereto.

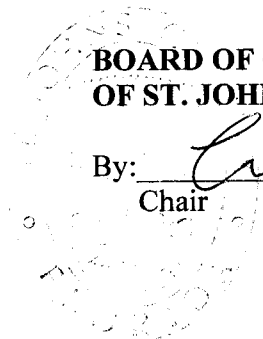
Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. This Resolution shall be effective upon execution.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 20th day of December, 2011.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____
Chair



ATTEST: Cheryl Strickland, Clerk

By: Wonne King
Deputy Clerk

RENDITION DATE 12/20/11

RFP 11-84
TOWER AND RADIO SYSTEM

COMMUNICATIONS SYSTEM CONTRACT AGREEMENT

THIS COMMUNICATIONS SYSTEM CONTRACT AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2011, by and between **ST. JOHNS COUNTY**, a political subdivision of the State of Florida, by and through the St. Johns County Board of County Commissioners, with its principal offices at 500 San Sebastian View, St. Augustine, Florida 32084 (hereafter referred to as "Owner" or "Licensee") and **MOTOROLA SOLUTIONS, INC.**, a Delaware corporation, having offices located at 1303 E. Algonquin Road, Schaumburg, Illinois 60196 (hereinafter referred to as the "Contractor" or "Licensor") under seal for Construction of **Bid Number 11-84 Tower and Radio System** (hereinafter referred to as the "Project"). For good and valuable consideration, the Owner and the Contractor hereby agreeing as follows:

Article 1. INCORPORATION OF EXHIBITS

The exhibits identified below are hereby incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through _ shall be resolved in their listed order.

Exhibit A	Statement(s) of Work
Exhibit B	Performance Schedule
Exhibit C	Payment Schedule
Exhibit D	Contractor "Software License Agreement"
Exhibit E	St. Johns County RFP No. 11-84
Exhibit F	Contractor Proposal Dated, October 13, 2011, as amended
Exhibit G	System Acceptance Certificate
Exhibit H	Work Sites
Exhibit I	System Description
Exhibit J	Equipment List(s)
Exhibit K	Contractor Warranty
Exhibit L	Third Party Warranties
Exhibit M	Acceptance Test Plan
Exhibit N	Schedule of Key People
Exhibit O	Pricing Summary

Article 2. DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

2.1. **"Acceptance Tests"** means those tests described in the Acceptance Test Plan attached hereto as Exhibit "___".

2.2. **"Administrative User Credentials"** means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. County's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

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

confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

2.4. **“Contract Price”** means the price for the System, excluding applicable sales or similar taxes and freight charges.

2.5. **“Effective Date”** means that date upon which the last Party executes this Agreement.

2.6. **“Equipment”** means the equipment that Owner purchases from Contractor under this Agreement. Equipment that is part of the System is described in the Equipment List attached hereto as **Exhibit “_____”**.

2.7. **“Final Project Acceptance”** means the date that all deliverables and other work in accordance with the Work have been completed to the satisfaction of the Owner.

2.8. **“Force Majeure”** means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

2.9. **“Infringement Claim”** means a third party claim alleging that the Equipment manufactured by Contractor or the Contractor Software directly infringes a United States patent or copyright.

2.10. **“Contractor Software”** means Software that Contractor or its affiliated company owns.

2.11. **“Non-Contractor Software”** means Software that another party owns.

2.12. **“Open Source Software”** (also called “freeware” or “shareware”) means software that has its underlying source code freely available to evaluate, copy, and modify.

2.13. **“Party” or “Parties”** means Owner or Contractor individually.

2.14. **“Parties”** means Owner and Contractor collectively.

2.15. **“Project Director”** means Owner's designated representative(s) authorized to act in the administration of this Agreement.

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

2.17. **“Software”** means the Contractor Software and Non-Contractor Software, in object code format that is furnished with the System or Equipment.

2.18. **“Specifications”** means a major part of the System that performs specific functions or operations. Subsystems are described in **Exhibit “_____”**.

2.19. **“System”** means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in **Exhibit “_____”**.

2.20. **“System Acceptance”** means the Acceptance Tests have been successfully completed.

2.21. **“Warranty Period”** means one (1) year from the date of Final System Acceptance.

Article 3. THE CONTRACT AND CONTRACT DOCUMENTS

3.1 The Contract

3.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, shall consist of the Contract Documents. The Contract shall be effective on the date in which this Agreement is executed by the last Party or its authorized designee.

3.2 The Contract Documents

3.2.1 The Contract Documents shall consist of this Agreement, Exhibits and any duly executed amendments hereto; the Bid Documents and Bid Forms; all Specifications; and any Change Orders issued hereafter and executed by the Parties.

3.2.2 Documents not enumerated in this Article are not Contract Documents and do not form part of the Contract.

3.2.3 Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with the information received from the Contract Documents. All Product Data, Samples and other submittals shall belong to the Owner and shall be delivered, or returned to Owner, as applicable, prior to Final Project Acceptance.

3.3 Entire Agreement

3.3.1 The Contract, as specifically described elsewhere in this Article, constitutes the entire and exclusive agreement between the Owner and the Contractor with reference to the subject Project. Specifically, but without limitation, the Contract supersedes any Bid Documents not listed among the Contract Documents described above and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

3.4 No Privity with Others

3.4.1 Nothing contained in the Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

3.5 Intent and Interpretation

3.5.1 The intent of the Contract is to require complete, correct and timely execution of the Work; any work that may be required by the Contract Documents; or any other work necessary to satisfactorily complete the Project at the Contract Price.

3.5.2 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

3.5.3 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.5.4 The words “include,” “includes” or “including,” as used in the Contract, shall be deemed to be followed by the phrase “without limitation.”

3.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as

constituting a material breach of the Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall not be deemed to constitute a material breach of the Contract.

3.5.6 Words or terms used as nouns in this Contract Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

3.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Owner of any perceived inconsistency, ambiguity, error or omission which the Contractor may discover with respect to the Contract Documents before proceeding with the affected Work. The issuance or the express approval by the Owner of the Contract Documents shall not relieve the Contractor of its continuing duty as set forth in this Article. The Owner has requested that the Project Director only prepare documents for the Project, including any drawings or specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER AS TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and shall not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

3.5.8 As between numbers and scaled measurements on the drawings and in the design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.

3.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, or other categories, nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or Work to be performed by Subcontractors.

3.6 Ownership of Contract Documents

3.6.1 The Contract Documents shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without Owner's consent and prior written authorization.

Article 4. THE WORK

4.1 The Contractor shall perform all of the Work required by this Agreement.

4.2 The term "Work" shall mean whatever is done by or is required of the Contractor to perform and complete its duties under the Contract, including the following: construction of the whole or a designated part of the Project in the manner set forth in the Contract Documents; furnishing of any required Surety Bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses (with the exception of FCC licenses) required of the Contractor, fuel, heat, light, cooling and all other utilities as required by the Contract. The Work to be performed by the Contractor is specifically set forth and described in the Statement of Work, attached hereto as Exhibit "___".

4.3 Changes Permitted

4.3.1 Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating the Contract, by Change Order.

4.3.2 Changes in the Work shall be performed under applicable provisions of this Agreement and the

Contractor shall proceed promptly with such changes.

4.4 Change Order Defined

4.4.1 Change Order shall mean a written order to the Contractor executed by the Project Director, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. Only the Change Order may change the Contract Price and the Contract Time.

4.5 Changes in the Contract Price

4.5.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 4.3.2 below.

4.5.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 4.5.1 above, the change in the Contract Price, if any, shall than be determined by the Project Director on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Project Director requires, an itemized accounting of such expenditures or savings. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Owner's Certificate of Payment.

4.5.3 If Unit Prices are provided in the Contract, and if the quantities contemplated are so changed in the proposed Change Order that application of such Unit Prices to the quantities of Work proposed shall cause substantial inequity to the Owner or to the Contractor that applicable Unit Prices shall be equitable adjusted.

4.6 Minor Changes

4.6.1 The Project Director shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Agreement. Such minor changes shall be made by written Change Order, and shall be binding upon the Owner and the Contractor. The Contractor shall promptly carry out such written Change Orders as provided herein.

4.7 Effect of Executed Change Order

4.7.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out or resulting from the Work included within or affected by the executed Change Order.

4.8 Notice to Surety; Consent

4.8.1 The Contractor shall notify and obtain the timely consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

4.9 Access to Work

The Owner and the Project Director shall have access to the Work at all times from commencement of the Work through Final Completion. The Contractor shall take whatever steps necessary to provide access when requested.

4.10 Right to Stop Work

If the Contractor fails or refuses to perform the Work in accordance with this Agreement, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

4.11 Owner's Right to Perform Work

If the Contractor's Work is stopped by the Owner under Paragraph 4.8, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage shall be eliminated or corrected, the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work.

In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, and compensation for the Owner's documented and itemized additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

4.12. Uncovering Work

4.12.1 If any of the Work is covered contrary to the Project Director's request or to any provision of this Contract, it shall, if required by the Project Director, be uncovered for the Project Director's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

4.12.2 If any of the Work is covered in a manner not described in Subparagraph 4.10.1 above, it shall, if required by the by the Project Director or Owner, be uncovered for the Project Director's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

4.13 Correcting Work

4.13.1 The Contractor shall immediately proceed to correct Work rejected by the Project Director as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work.

4.13.2 If within one (1) year after Final Project Acceptance, if any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it within seven (30) days at the Contractor's expense upon receipt of written notice from the Owner. This obligation shall survive Final Payment by the Owner and termination of this Contract.

4.13.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract. Establishment of the one (1) year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work, and has no relationship to the time which the obligation to comply with the Contract Documents may be sought to be enforced.

4.14 Owner May Accept Defective or Nonconforming Work

If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such events, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project had it not been constructed in such manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance or defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, credit the Owner such remaining compensation for accepting defective or nonconforming Work.

Article 5. CONTRACT TIME AND LIQUIDATED DAMAGES

5.1 Term

Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Completion or expiration of the Warranty Period, whichever occurs last.

5.2 Time and Liquidated Damages

5.2.1 The Contractor shall commence the Work upon the Effective Date and shall complete all Work within 366 consecutive calendar days ("Final Completion").

5.2.2 The number of calendar days from the Effective Date through the date set forth for Final Completion, shall constitute the "Contract Time."

5.2.3 The Contractor shall pay the Owner the sum of two thousand five hundred dollars (\$2500) per day for each and every calendar day of unexcused delay in achieving Final Project Acceptance beyond the date set forth herein for Final Completion ("Liquidated Damages"). Total Liquidated Damages may not exceed five percent (5%) of the Contract Price. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that Final Completion shall be inexcusably delayed the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Contractor may receive a day for day credit for delays caused by Owner, mutually agreement upon schedule delays and event of force majeure as provided elsewhere herein.

5.3 Time is of the Essence

5.3.1 All limitations of time set forth in the Contract Documents are of the essence of the Contract.

Article 6. CONTRACT PRICE

6.1 The Contract Price in U.S. dollars is twenty four million five hundred thousand dollars and 00/100 (\$24,500,000). Notwithstanding any other provision in this Agreement to the contrary, this amount represents Owner's maximum indebtedness for the Project together with all related costs including, but not limited to transportation and reimbursables, if applicable. The Pricing Summary as provided elsewhere in this Agreement shall be included with the Payment Schedule. Contractor has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities or services in accordance with a Change Order herein, may affect the overall Contract Price, including discounts if applicable.

Article 7. PAYMENT OF THE CONTRACT PRICE

7.1 Pricing Summary

7.1.1 A Pricing Summary allocating the Contract Price to the various portions of the Work is attached hereto and incorporated herein as Exhibit_____.

7.2 Billing, Invoicing and Payment Procedure

7.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

7.2.2 Contractor will submit Invoices to Owner and Owner shall make payments to Contractor in accordance with the Payment Schedule attached hereto as Exhibit _____. Except for a payment that is due on the Effective Date, Owner will make payments to Contractor within forty-five (45) days after the date of each invoice. Owner will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Contractor is 36-1115800.

7.2.3 Invoices shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Project Director and Engineer shall review the Invoice and may also review the Work at the project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Invoice and is as required by this Contract. The Project Director shall determine and certify to the Owner the amount properly owing to the Contractor.

7.2.4 The Contractor warrants that upon submittal of an Invoice, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

7.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

7.2.6 No payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

7.3 Withheld Payment

7.3.1 Owner may decline to make payment, may withhold funds and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- a) defective Work not remedied by the Contractor or in accordance with a mutually agreed upon plan to cure;
- b) claims of third parties against the Owner or the Owner's property caused by any act or omission by the Contractor;
- c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;

- d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- e) evidence that the Work shall not be completed in the time required for Substantial or Final Completion;
- f) failure to carry out the Work in accordance with the Contract;
- g) damage caused by any act or omission by the Contractor to the Owner's property or to that of a third party to whom the Owner is, or maybe, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 7.3.1, the Contractor shall promptly comply with such demand.

7.4 Unexcused Failure to Pay

7.4.1 If within thirty (30) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount due and payable to the Contractor, then the Contractor may after thirty (30) additional days, written notice to the Owner and the Project Director, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within thirty (30) days after the date due shall bear interest at the rate of one percent (1%) per annum.

7.5 Final Completion and Final Payment

7.5.1 When all the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Project Director thereof in writing. Thereupon, the Project Director shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Project Director shall promptly issue a Final Certificate for Payment and if required to repeat its Final Inspection of the Work, the Contractor shall bear the cost of such repetition of the Work.

7.5.1.1 If the Contractor fails to achieve Final Completion within the time fixed therefore by the Parties the Contractor shall pay the Owner Liquidated Damages as provided elsewhere herein.

7.5.2 The Contractor shall not be entitled to Final Payment unless and until it submits to the Project Director its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of claims and lien from all Subcontractors of the Contractor and of any and all other parties required by the Project Director or the Owner; consent of Surety, if any, to Final Payment. If any third party fails or refuses to provide a release of claim or waiver of a lien as required by Owner the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

7.5.3 The Owner shall make Final Payment of all sums, due the Contractor within thirty (30) days of the Project Director's execution of a Final Certificate for Payment.

7.5.4. Acceptance of Final Payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of Final Payment, and identified in writing by the Contractor as unsettled at the time of its request for Final Payment.

7.6 Invoicing Address

7.6.1 Invoices shall be submitted to the Owner at the following address: *{insert invoicing address}*

Owner may change the Invoicing Address by providing written notice to the Contractor.

Article 8. DELIVERY, STORAGE, TITLE AND RISK OF LOSS

The Contractor shall be responsible for transportation and storage of all Hardware and Software components of the System as described in this Agreement. All risk of loss or damage to Hardware and Software while in transit, storage, or installed at the Work sites but prior to Final Project Acceptance, shall be the responsibility of the Contractor. The County shall under no circumstances assume liability for System Hardware and Software until Final Project Acceptance.

The Contractor shall prepare for shipment, transport, and install the System in accordance with the Contract Documents.

Except as otherwise provided for in this Agreement, full and complete title to the System will pass from the Contractor to the County upon Final Project Acceptance, except for Software and other products for which title of owner does not transfer. The Contractor warrants that the County shall have clear title in and to the System, free and clear of all encumbrances, upon Final Project Acceptance.

Article 9. SITE AND SITE CONDITIONS

9.1 Access to Sites

Owner will provide Contractor with access to the work sites identified in Exhibit ____ ("Work Sites"), so that Contractor may perform its duties in accordance with the Performance Schedule and Statement of Work. The Owner shall also provide its own designated Project Director.

9.2. Site Conditions

9.2.1. Contractor acknowledges that the Work Sites are located on property owned by St. Johns County, a political subdivision of the State of Florida. Owner makes no representation or warranties regarding the safety, security, or site conditions of the Work Sites. Contractor forever releases and discharges Owner, its agencies, officers, directors and employees from any and all liability and damages to the extent caused by Owner or Contractor's negligence arising out of or in connection with the safety, security, or site conditions of the Work Sites. Contractor shall indemnify and hold harmless Owner, its officers, employees, agents, and representatives from any and all liability and damages to the extent caused by Contractor's negligence arising out of or in connection with the safety, security, or site conditions of the Work Sites. If Contractor discovers a hazardous condition on the Work Site(s) that will materially impair Contractor's ability to carry out Contractor's obligations under this Agreement as it pertains to the installation of the System or Subsystem on the Work Site(s), it may stop work until the hazardous condition no longer impairs Contractor's ability to carry out Contractor's obligations hereunder as it pertains to the installation of the System or Subsystem on the Work Site(s). Contractor shall notify the Owner in writing within twenty-four (24) hours upon having discovered such hazardous condition.

9.2.2 The Contractor shall keep the site reasonably clean during performance of the Work. Upon Final Completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

9.3. Site Issues

9.3.1 If a Party determines that the sites identified in Exhibit "____" are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in Exhibit "____", the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary to remove said sites from the plans and specifications. If change in sites or adjustment to the installation plans and specifications causes a change in the Contract Price or time to perform, the Parties will equitably amend the Contract Price, Contract Time, and/or Performance Schedule by Change Order.

9.3.2 Excluding permits, licenses and fees normally the responsibility of the Contractor, the Owner shall obtain all necessary permits, zoning variances, licenses, easements, approvals, and the like required for construction at the Work Sites.

Article 10. SOFTWARE AND EQUIPMENT

10.1 Contractor Software

Any Contractor Software, including subsequent releases, is licensed to Owner solely in accordance with the Software License Agreement. Owner hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

10.2 Non-Contractor Software

Any Non-Contractor Software is licensed to Owner in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Contractor the right to sublicense the Non-Contractor Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Contractor makes no representations or warranties of any kind regarding Non-Contractor Software. Non-Contractor Software may include Open Source Software. All Open Source Software is licensed to Owner in accordance with, and Owner agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Contractor shall identify the Open Source Software, if any, to be provided under this Agreement and provide to Owner a list and a copy of the applicable standard license(s) for the Open Source Software within thirty (30) business days from the date of shipment.

10.3 Substitutions

At no additional cost to Owner, Contractor may substitute any Equipment, Software, or services to be provided by Contractor, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Owner. Any substitution will be reflected by Change Order.

10.4 Additional Equipment

For five (5) years after the Effective Date, Owner may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass and warranty will commence upon delivery and acceptance by Owner within five (5) business days from receipt of the Equipment, and payment is due within forty-five (45) days after the invoice date. Contractor shall send Owner an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Owner may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

Article 11. TRAINING

The training to be provided by Contractor to Owner is described in the Training Guidelines described in Exhibit "_____" (Statement of Work). Owner will notify Contractor immediately if a date change for a scheduled training program is required. If either Party incurs additional costs because the other Party reschedules a training program less than thirty (30) days before its scheduled start date, either Party may recover these additional costs.

Article 12. SYSTEM ACCEPTANCE

12.1 Commencement of Acceptance Testing

Contractor will provide to Owner at least ten (10) business days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

12.2 System Acceptance

System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Owner determines during the Acceptance Tests that the System is deficient, Owner shall deliver written notification to Contractor describing said deficiency. Thereafter, Contractor shall have fifteen (15) days to provide a plan to cure to Owner, which cure plan shall be approved by Owner, from the date of Owner's written notice, or such other time as Owner and Contractor mutually agree in writing. Contractor shall have fifteen (15) days from Owner's approval of the cure plan to correct the deficiency(s), or for the period detailed and approved in the plan. If the deficiency(s) is timely and properly corrected, Owner shall execute an acceptance certificate. If Owner does not provide to Contractor a deficiency notice within forty-five (45) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule and added to a punch list.

12.3. Final Project Acceptance.

Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed in accordance with the Scope of Work. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Article 13. REPRESENTATIONS AND WARRANTIES

13.1 System Functionality

Contractor represents that the System will perform in accordance with the Specifications in all material respects. Upon Final Project Acceptance, the System functionality representation shall be fulfilled. Contractor is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Contractor which is attached to or used in connection with the System or for reasons or parties beyond Contractor's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Owner changes to load usage or configuration outside the Specifications.

13.2 Equipment Warranty

During the Warranty Period, Contractor warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. Contractor warrants that the Equipment will be fit for use for the purposes described in this Agreement and all attachments hereto. If System or Subsystem Acceptance is delayed beyond six (6) months after delivery of shipment by events or causes within Owner's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

13.3 Contractor Software Warranty

Unless otherwise stated in the Software License Agreement, during the Warranty Period, Contractor warrants the Contractor Software in accordance with the terms of the Software License Agreement and the provisions of this Article 13 that are applicable to the Contractor Software. If System or Subsystem Acceptance is delayed beyond six (6) months after delivery of shipment by events or causes within Owner's control, this warranty expires eighteen (18) months after the shipment of the Equipment. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

13.4 Exclusions to Equipment and Contractor Software Warranties

These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Contractor Software in other than its normal, customary, and authorized manner; accident, liquids, neglects, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Contractor; Owner's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

13.5 Warranty Claims

To assert a warranty claim, Owner must notify Contractor in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor will (at its option and at no additional charge to Owner) repair the defective Equipment or Contractor Software or replace it with the same or equivalent product. That action will be the full extent of Contractor's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Contractor may invoice Owner for responding to the claim on a time and materials basis using Contractor's then current labor rates. Repaired or replaced product shall be warranted for the balance of the Warranty Period. All replaced products or parts will become the property of Contractor.

13.6 Original End User is Covered

These express limited warranties are extended by Contractor to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

13.7 Disclaimer of Other Warranties

THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND CONTRACTOR SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY.

Article 14. DELAYS

14.1 Force Majeure

Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a

Force Majeure occurs, the Parties will execute a Change Order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

14.2 Performance Schedule Delays

If either Party (including its other contractors) delays the Performance Schedule, the parties will execute a change order to extend the Performance Schedule and, if requested and with not less than fourteen (14) days' notice, the responsible Party for the delay will compensate the other Party for all reasonable and actual charges incurred because of the delay. Contractor's delay charges may include costs incurred by Contractor or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and remobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan. Notwithstanding the foregoing, all reasonable and actual charges incurred because of a delay by a party, must either be agreed to by the parties at the time of such delay, or if such charges incurred because of a delay by a party, must either be agreed to by the parties at the time of such delay, or if such charges cannot be agreed by the parties at such time, determined by a court of competent jurisdiction.

Article 15. INDEMNIFICATION

15.1 General Indemnity by Contractor

Contractor, and Contractor, on behalf of its employees, agents and subcontractors shall indemnify, defend and hold harmless the Owner, its agencies, officers, directors and employees and employees, from and against any damages, liabilities, losses and costs, including but not limited to reasonable attorneys' fees to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Contractor in the performance of Contractor's obligations under this Agreement, and other persons employed or utilized by Contractor in the performance of Contractor's obligations under this Agreement.

15.2 Environmental Indemnity by Contractor

Contractor will indemnify and hold Owner harmless from environmental liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all legally required costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) Contractor's actions or inactions (to the extent Contractor's was legally required to act) that result in a violation on any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to Contractor's actions or inactions (to the extent Contractor's was legally required to act), or (b) any environmental, health and safety liabilities arising out of or relating to the performance of its obligations under this Agreement performed in connection with this Agreement to Contractor. Owner will be entitled to control any remedial action, any proceeding relating to an environmental claim pursuant to a State of Florida or federal government Order.

15.3 Violation of Laws Indemnity by Contractor

Contractor shall indemnify and hold the Owner harmless from liability from the violation of applicable laws by Contractor, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all legally required costs for investigation and defense thereof including, but not limited to, court-awarded court costs, reasonable expert witness fees and attorney fees), arising from or based upon the violation of any applicable federal, state, or municipal laws, statutes, resolutions, rules or regulations, by Contractor or those under their control. This subsection will not be construed to create a separate cause of action from Section 15.9.

15.4 Breach of Representations, Warranties and Oblations by Contractor

Contractor shall indemnify and hold Owner harmless from liability from breach of representations, warranties and obligations, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all reasonable costs for investigation and defense thereof including, but not limited to, court awarded court costs, reasonable expert witness fees and attorneys fees) which may be incurred by, charged to or recovered from Owner, arising directly out of any breach of any terms, covenants, conditions or provisions of this Agreement and any representation or warranty made by Contractor in connection with this Agreement or in any obligation, certificate, document, writing or other instrument delivered by Contractor pursuant to this Agreement.

15.5. Contractor's duties to defend and indemnify the Owner in accordance with the entirety of Section 15.1 through 15.4, are conditioned upon: Owner promptly notifying Contractor in writing of a claim or violation; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Owner providing to Contractor cooperation and, if requested by Contractor, reasonable assistance in the defense of the claim or violation. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against Owner by a court of competent jurisdiction for a claim, violation, or as agreed to, in writing, by Contractor and in settlement of a claim or violation.

15.6. General Indemnity by Owner

To the extent permissible by law, Owner will indemnify and hold Contractor harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Contractor to the extent it is caused by the negligence of Owner, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Contractor gives Owner prompt, written notice of any the claim or suit. Contractor will cooperate with Owner in its defense or settlement of the claim or suit. This section sets forth the full extent of Owner's general indemnification of Contractor from liabilities that are in any way related to Owner's performance under this Agreement. Notwithstanding the foregoing, any indemnification given by the Owner shall be governed by the provisions and limitations of Section 768.28, Florida Statutes; and this indemnification by the Owner is not, nor shall it be construed as a further waiver if its sovereign immunity beyond the limited legislative waiver thereof in Section 768.28, Florida Statutes, as authorized in Article X, Section 13, Florida Constitution (1968 Rev.), as amended.

15.7. Patent and Copyright Infringement

15.7.1 Contractor will defend at its expense any suit brought against Owner 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: Owner 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 Owner 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 Owner by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim.

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

15.7.3 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 Contractor and that is attached to or used in connection with the Product; (c) Product designed or manufactured in accordance with Owner'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 Owner 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 Owner extend in any way to royalties payable on a per use basis or the Owner's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from Owner from sales or license of the Infringing Product.

15.7.4 This Article 15 provides Owner's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim. Owner has no right to recover and Contractor has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 16.

Article 16. LIMITATION OF LIABILITY

Notwithstanding any other provision herein to the contrary and to the extent permitted by Florida law, except for personal injury, death, tangible or real property damage, and Contractor's total liability for breach of contract, negligence, warranties, indemnities or strict liability in tort or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the total Contract Price. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. This provision is not, nor shall it be construed as, a waiver of the Owner's sovereign immunity beyond the limited legislative waiver therein in § 768.28, Florida Statutes, as authorized by Article 10, § 13, Florida Constitution (1968 Rev.), as amended.

Article 17. CONFIDENTIALITY AND PROPRIETARY RIGHTS.

17.1.1. Confidentiality Obligation. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. During the term of this Agreement and for a period of three (3) years from the date of expiration or termination of this Agreement, recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not reverse engineer, de-compile or disassemble any Confidential Information; (iv) use reasonable care in safeguarding against disclosure of Confidential Information; (v) promptly notify discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

17.1.2. Required Disclosure. If a recipient is required to disclose Confidential Information pursuant to applicable law, statute, or regulation, or court order, the recipient will give to the discloser prompt written notice of the request and a reasonable opportunity to object to such disclosure and seek a protective order or appropriate remedy. If, in the absence of a protective order, the recipient determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only Confidential Information specifically required and only to the extent required to do so.

17.1.3. Confidential Exceptions. Recipient is not obligated to maintain as confidential, Confidential Information that recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this Agreement; (ii) is explicitly approved for release by written authorization of discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the recipient prior to such disclosure; or (v) is independently developed by recipient without the use of any discloser's Confidential Information or any breach of this Agreement.

17.1.4. Ownership and Retention. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of discloser's written request, recipient will return all Confidential Information to discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

17.2 Preservation of Contractor's Proprietary Information

Contractor, the third party manufacturer of any Equipment, and the copyright owner of any Non-Contractor Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Contractor in connection with providing to Owner the Equipment, Software, or related services remain vested exclusively in Contractor, and this Agreement does not grant to Owner any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Contractor does not grant to Owner, either directly or by implication, estoppel, or otherwise, any right, title or interest in Contractor's Proprietary Rights. Owner will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Article 18. FLORIDA PUBLIC RECORDS LAW.

Notwithstanding any provision in this Agreement to the contrary, the parties agree that: Owner is political subdivision of the State of Florida and is subject to Chapter 119, Florida Statutes, and related statutes known as the "Public Records Laws" and that this Agreement shall be a public record as defined therein. Any specific information that Contractor claims to be Confidential must be clearly identified as such by Contractor. To the extent consistent with Florida Law, Owner shall maintain the confidentiality of all such information marked by Contractor as confidential. If a request is made to view such Confidential Information, Owner will notify Contractor of such request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining such disclosure. If Contractor fails to obtain that court order enjoining disclosure, Owner will release the requested information on the date specified. Such release shall be deemed to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copyright or other intellectual property; nor will such release be deemed to be a breach of this Agreement or any provision thereof.

Article 19. GENERAL OBLIGATIONS

19.1 Owner

19.1.1 The Owner shall furnish to the Contractor, at the time of executing this Agreement, any and all written and tangible material in its possession concerning conditions below ground at the site of the

Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site. Copies may be provided instead of originals.

19.1.2 The Owner shall furnish the Contractor, free of charge, 5 copies of the Contract Documents for execution of the Work. The Contractor shall be charged, and shall pay the Owner twenty five dollars (\$25.00) per additional set of Contract Documents which it may require.

19.1.3 The Owner shall furnish the Contractor, free of charge, 3 copies of the complete, final executed Contract. The Contractor shall be charged, and shall pay the Owner twenty five dollars (\$25.00) per additional set of Contract Documents which it may require.

19.2 CONTRACTOR

19.2.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 3.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work where Contractor knows or should know such work involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Project Director and the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

19.2.2 The Contractor shall perform the Work strictly in accordance with the Contract.

19.2.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and other engaged in the Work on behalf of the Contractor.

19.2.4 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract shall be competent to perform the tasks undertaken in accordance with industry standards, that materials and equipment furnished shall be of good quality, free from faults and defects and in strict conformance with this Contract. This warranty shall survive termination of this Contract and shall not be affected by Final Payment hereunder. All Work not conforming to these requirements may be considered defective.

19.2.5 Contractor shall obtain and pay for all permits, fees and licenses (with the exception of FCC licenses) necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

19.2.6 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or Assignees.

19.2.7 Key supervisory personnel assigned by the Contractor to this Project are identified in Exhibit _____.

So long as such individuals remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 19.2.7 as though such individuals have been listed above.

19.2.8 The Contractor shall continuously maintain at the site, for the benefit of the Project Director, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Project Director the approved Product Data, Samples and other similar required submittals. Upon Final Completion of the Work, all of these record documents shall be delivered to the Owner.

19.2.9 The Contractor, prior to commencing the Work, shall submit to the Project Director for his/her information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each sum revision shall be furnished to the Project Director. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

19.2.10 The Contractor shall continuously maintain at the site, for the benefit of the Project Director, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction.

19.2.11 The Contractor shall be responsible for supervising all safety precautions.

19.2.12 The Contractor shall designate a member of the onsite construction team whose duty shall be the prevention of accidents. This person shall be the Contractor's Project Manager.

Article 20. CONTRACT ADMINISTRATION

20.1 Project Director

20.1.1 The Project Director, unless otherwise directed by the Owner shall perform those duties and discharge those responsibilities allocated to the Project Director as set forth in this Contract. The Project Director shall be the Owner's representative from the effective date of this Contract until Final Payment has been made. The Project Director shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

20.1.2 The Owner and the Contractor shall communicate with each other in the first instance through the Project Director.

20.1.3 The Project Director shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance there under by the Contractor. The Project Director shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

20.1.4 The Project Director shall review the Contractor's Applications for Payment and shall certify to the Owner for payment to the Contractor, those amounts then due to the Contractor as provided in this Contract.

20.1.5 The Project Director shall have authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Director deems it necessary or advisable, the Project Director shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

20.1.6 The Project Director shall review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

20.1.7 The Project Director shall prepare Change Orders.

20.1.8 The Project Director shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and shall issue a Final Certificate for Payment upon compliance with the requirements of this Contract.

20.1.9 The Project Director's decision in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

20.2 Claims by the Contractor

20.2.1 All Contractor claims shall be initiated by written notice and claim to the Project Director. Such written notice and claims must be furnished within thirty (30) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

20.2.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 20.2 shall be reflected by a Change Order executed by the Project Director and the Contractor.

20.2.3 Claims for Concealed and Unknown Conditions - Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an usual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, wherein the Contract Documents or Standard Construction industry practices have not placed the responsibility of discovering such concealed and unknown conditions upon the Contractor prior to the Contractor submitting his Bid for the Work, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within thirty (30) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Project Director written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

20.2.4 Claims for Additional Costs - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Project Director written notice of such claim within thirty (30) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

20.2.4.1 Neither the Owner nor the Contractor shall be liable to the other for claims of third parties, including Subcontractors, unless and until liability of the Owner or Contractor has been established by a court of competent jurisdiction.

20.2.5 Claims for Additional Time - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Project Director, for such reasonable time as the Project Director may determine.

20.2.5.1 Delays and Extensions of Time - An extension of Contract Time shall not be given due to weather conditions unless such weather conditions more severe than average have caused a delay. In requesting extension of time for weather conditions; Contractor shall present complete records and such requests shall document how weather conditions delayed progress of Work.

20.2.6 Any notice and claims for an extension of time by the Contractor shall be made not more than thirty (30) days after the occurrence of the event or the first appearance of the condition giving the rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim for an extension shall be waived. This paragraph shall not be deemed to waive any damages for delay that are covered by insurance.

Article 21. CONTRACT TERMINATION

21.1 Termination by the Contractor

21.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

21.1.2 If the Owner shall fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate if such failure is not substantially corrected within fifteen (15) days, the Contractor may terminate performance under this Contract by written notice to the Project Director. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 20.2.1 hereunder.

21.2 Termination by the Owner

21.2.1 For Convenience

21.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

21.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

21.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

21.2.1.4 (a) The Contractor shall submit a termination claim to the Project Director specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Project Director. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

- (b) The Owner and the Contractor may agree to compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts;
- (d) Contract prices for labor, materials, equipment, and other services accepted under this Contract;
- (e) Reasonable costs incurred in preparing to perform and in performing a portion of the Work prior to termination and not included in (d) or (e), and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract had been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (f) Reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

21.3 For Cause

21.3.1 If the Contractor refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled Workers, supervisory personnel or proper equipment or materials, or if it fails to make payment to Subcontractors, or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may, by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

21.3.2. If the unpaid balance of the Contract Price less any liquidated damages due under this Contract, exceeds the cost of finishing the Work, including compensation for the Project Director's additional services and expenses made necessary thereby, such exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

21.3.3 In the event the Agreement is terminated by the Owner for cause pursuant to Subparagraph _____ and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

Article 22. INSURANCE

22.1 Contractor's Insurance:

22.1.1 Insurance Requirements

- a) Workers' compensation – to meet statutory limits in compliance with the Workers Compensation Law of Florida. This policy must include Employer Liability with a limit of \$100,000 for each accident, \$500,000 disease policy limit and \$100,000 disease each employee limit.
- b) Commercial general liability – coverage shall provide minimum limits of liability of \$1,000,000 per occurrence, \$2,000,000 Aggregate, for bodily injury and property damage. This shall include coverage for:
 - a. Premises/operations
 - b. Products/complete operations
 - c. Contractual liability
 - d. Independent contractors
- c) Business auto liability – coverage shall provide minimum limits of liability of \$100,000 per occurrence, \$300,000 aggregate for bodily injury and property damage. This shall include coverage for:
 - a. Owned autos
 - b. Hired autos
 - c. Non-owned autos

Special Requirements

- a) Prior to execution of a contract, a certificate of insurance will be provided that shall provide for the following:
 - a. St. Johns County will be named as additional insured on all commercial general liability, business auto liability and excess/umbrella liability policies.
 - b. St. Johns County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance.
 - c. The Certificate of Insurance shall note “*{Insert Project Name}*” in the project description block.
- b) It is the responsibility of the contractor to insure that all subcontractors comply with all insurance requirements.
- c) It should be remembered that these are minimum requirements which are subject to modification in response to high hazard operations.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

Article 23. DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a “**Dispute**”).

23.1 This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in St. Johns County, Florida.

23.2 Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute (“**Notice of Dispute**”) to the other Party specifying the nature of the Dispute. The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives.

23.3 If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Dispute, either Party may then submit the Dispute to a court of competent jurisdiction in the State of Florida. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in St. Johns County, Florida over any claim or matter arising under or in connection with this Agreement.

23.4 All communications pursuant to Subsection 22.2 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections

provided by applicable law; provided however, the parties agree that release of such information is governed by the provisions of the Florida Public Records Law, as codified in Chapter 229, Florida Statutes. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Article 24. SUBCONTRACTORS

24.1 Definition

24.1.1 A Subcontractor is an entity, which has a direct Contract with the Contractor to perform a portion of the Work.

24.2 Award of Subcontracts

24.2.1 Upon execution of the Contract, the Contractor shall furnish the Project Director, in writing, the names of persons or entities proposed by the Contractor to act as a first tier Subcontractor on the Project. The Project Director shall promptly reply to the Contractor, in writing, stating any objections the Project Director may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Project Director has made a timely objection.

24.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor, which correspond to those rights afforded to the Owner as set forth elsewhere herein.

Article 25. EQUAL EMPLOYMENT OPPORTUNITY

25.1 Contractor's Employment Opportunity

25.1.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age.

The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

25.1.2 The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin or age.

Article 26. APPRENTICESHIP LAW REQUIREMENTS

26.1 Pursuant to Chapter 446, Florida Statutes (Apprenticeship Law), if applicable:

26.1.1 The Contractor shall make a diligent effort to hire for Performance of the Contract a number of apprentices in each occupation which bears to the average number of journeyman in that occupation to be employed in the performance of the Contract, the ratio of at least one (1) apprentice or trainee to every five (5) journeymen.

26.1.2 The Contractor shall, when feasible and except when the number of apprentices or trainees to be hired is fewer than four (4), assure that twenty-five (25) percent of such apprentices or trainees are in their first year of training. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices or trainees, the hazardous nature of the Work for beginning

workers, and excessive unemployment of apprentices or trainees in their second or subsequent years of training.

26.1.3 The Contractor, during the performance of the Contract, shall make diligent efforts to employ the number of apprentices or trainees necessary to meet requirements of Subparagraphs a. and b. However, on-the-job training programs shall only be established in non-apprenticable trades or occupations to meet the requirements of this section.

26.1.4 The Contractor agrees to return records of employment, by trade, of the number of apprentices or trainees by first year of training, and the number of journeymen and the wages paid, and hours of work, of such persons on a form as prescribed by the Bureau of Apprenticeship of the Division of Labor at three (3) month intervals. Submission of duplicate copies of forms submitted to the United States Department of Labor shall be sufficient compliance with the provisions of the section.

26.1.5 The Contractor agrees to supply the Bureau of Apprenticeship of the Division of Labor, at three (3) months intervals, a statement describing steps taken toward making diligent effort and containing a breakdown by craft or hours worked and wages paid for first year apprentices or trainees, other apprentices or trainees and journeymen.

26.1.6 The Contractor agrees to insert in any Subcontract under this Contract the requirements contained in this section. "The term Contractor" as used in such clauses and any Subcontract shall mean the Subcontractor.

26.1.7 Anything herein to the Contrary notwithstanding, Contractor agrees to comply with all of the provisions of Florida Statutes 446 and all regulations prescribed by the Bureau of Apprenticeship of the Division of Labor.

Article 27. RECORDS

27.1 Review of Records

As a conditions of entering into this Contract Agreement/Contract, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the (insert name of other party) authorizes the County to examine, review, inspect, and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Contract Agreement. It is specifically noted that (insert name of party) is under no duty to provide access to documentation not related to this Contract Agreement, and/or is otherwise protected by County, State, or Federal law.

27.2 Retention of Records

Contractor and its Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred in the provision of the System; and shall make such materials available at all reasonable times, during the period of this Agreement and for five (5) years from the date of final payment under this Agreement, for inspection and/or audit by Owner. All such documents relating to the services performed, System provided or money expended under this Agreement shall be open to Owner's inspection and audit during Contractor's regular business hours. In no event will Contractor be required to disclose its confidential or proprietary cost or pricing data.

Article 28. GENERAL

28.1. Taxes

In accordance with state and federal law, the Owner is exempt from the following taxes: (a) State of Florida Sales Tax and (b) Manufacturer's Federal Excise Tax. Accordingly, the Owner shall not be responsible for payment of any excise, sales, lease, use, property, or other taxes, assessments or duties related to the Equipment or other services provided hereunder.

28.2. Assignability and Subcontracting

Neither Party may assign this Agreement without the prior written consent of the other Party. Consent of such assignment will not be unreasonably withheld by the parties. Contractor may subcontract any of the work, but subcontracting will not relieve Contractor of its duties under this Agreement. Notwithstanding the foregoing, Contractor may assign its right to receive payment under this Agreement without the prior consent of Owner.

28.3. Waiver

Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

28.4. Severability

If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

28.5. Independent Contractor Relationship

Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

28.6. Captions, Headings and Article References

The article headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

28.7. Entire Agreement and Counterparts

This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Owner purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed on separate pages, and when attached to this Agreement shall constitute one complete document.

28.8. Notices

Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below 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:

Owner: St. Johns County, Florida

500 San Sebastian View
St. Augustine, FL 32084

With copies to: St. Johns County Attorney
500 San Sebastian View
St. Augustine, FL 32084

Contractor

Jim Redington
Project Manager
Motorola Solutions, Inc.
1851 NE 65 Street
Ft Lauderdale, FL 33308

With Copies to: Judy Jean-Pierre
Motorola Solutions, Inc.
Law Dept., IL02, 8th Floor
1303 E. Algonquin Road
Schaumburg, IL 60196

28.9. Compliance with Applicable Laws

Each Party will comply with all applicable federal, state and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Owner will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Contractor might assist Owner in the preparation of its FCC license applications, neither Contractor nor any of its employees is an agent or representative of Owner in FCC or other matters.

28.10. Authority to Execute Agreement

Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

28.11. Survival of Terms

The following provisions will survive the expiration or termination of this Agreement for any reason:
{insert article provisions}

Article 29. MISCELLANEOUS

29.1 Successors and Assigns

29.1.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party with respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

29.2 Surety Bonds

29.2.1 The Contractor shall furnish a separate Public Construction Bond to the Owner. Such Bonds shall set forth a penal sum in an amount not less than the Contract Price. The Bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such Bonds. The Public Construction Bond shall provide that in the event the Contract Price is adjusted by Change Order executed by the Contractor. The Public Construction Bond furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a Surety, or Sureties, reasonably suitable to the Owner.

29.3. Safety of Persons and Property

29.3.1 When existing utility lines shown on the Drawings are to be removed or relocated, the Contractor shall notify the Engineer in ample time for taking measures for prevention of the interruption of any required services prior to the beginning of operations. In the event that the Contractor damages any existing utility lines not shown on the Drawings, the location of which is not known to the Contractor, report thereof shall be made immediately to the Engineer.

29.3.2 Locations of existing utility lines shown on the Drawings are based on the best information available to the Engineer, but shall not be considered exact either as to location or number of such lines.

29.3.3 Contractor shall protect utility lines constructed under terms of the agreement and those discovered or shown on Drawings to be existing. Damage occurring to utility lines due to Contractor's operations shall be repaired at no cost to the Owner.

{Remainder of page intentionally left blank}

The Parties hereby enter into this Agreement as of the Effective Date.

Owner

St. Johns County (Seal)

By: _____
Signature

Printed Name & Title:

Date of Execution

Contractor

Motorola Solutions, Inc. (Seal)

By: _____
Signature

Printed Name & Title

Date of Execution

Cheryl Strickland, Clerk of Courts

By: _____
Deputy Clerk

Date of Execution

Review as to Legal Sufficiency:

Assistant County Attorney

Date: _____

14.36 Pricing Summary

This worksheet summarizes all of the previous the pricing worksheets to derive a Total Project Cost. Proposers are encouraged to provide cost reduction measures in the form of Trade-In allowances and/or other cost reduction Incentives. After establishing this "Base Total Project Cost, the Proposers are also encouraged to provide creative and meaningful "Cost Reduction Options" which, in the Proposer's opinion, change the scope of equipment, features, and/or services in the project while still meeting the intent of the County's functional requirements.

Total Master Site Equipment and Services	\$1,847,873.00
Total Master Redundant Site Equipment and Services	\$550,766.00
Total Simulcast Subsystem Prime Site Equipment and Services	\$698,699.00
Total Simulcast Subsystem Remote Sites and Services	\$15,444,474.00
Total Communications Center Microwave Equipment and Services	\$468,374.00
Total Sheriff's Office Dispatch Equipment and Services	\$352,061.00
Total Fire Rescue Dispatch Equipment and Services	\$292,200.00
Total SAPD Dispatch Equipment and Services	\$260,296.00
Total Backup PSAP Dispatch and Microwave Equipment and Services	\$853,394.00
Total EOC Control Station Equipment and Services	\$0.00
Total Interoperability and Mutual Aid Equipment and Services	\$613,430.00
Total Recommended Spares for Infrastructure Equipment	\$202,790.00
Total Sheriff's Mobile, Portable, Control Station Radios and Related Services	\$4,782,769.00
Total Fire Rescue Mobile, Portable, Control Station Radios and Related Services	\$1,687,850.00
Total SAPD Mobile, Portable, Control Station Radios and Related Services	\$570,172.00
Total SAFD Mobile, Portable, Control Station Radios and Related Services	\$249,448.00
Total SABPD Mobile, Portable, Control Station Radios and Related Services	\$181,887.00
Total SHOT Mobile, Portable, Control Station Radios and Related Services	\$370,449.00
Total Animal Control Mobile, Portable, Control Station Radios and Related Services	\$43,017.00
Total Training	\$175,958.00
Total Test Equipment	\$0.00
Performance Bond	\$289,182.00
Total Warranty and Maintenance Services through year 10	\$0.00
Total Base Project Cost (before Cost Adjustments)	\$29,935,089.00
System Discount for Infrastructure Items as Proposed and Contract Execution prior to December 31, 2011	(\$2,567,467.00)
System Discount for Concurrent Purchase of Tower Equipment and Services	(\$701,014.00)
System Discount for System Purchase with all Subscribers as Proposed	(\$2,166,608.00)
Total Base Project Cost after Discounts	\$24,500,000.00
Optional Warranty and Maintenance Services through year 10	\$7,985,614.00
Optional Microwave Spur	\$144,421.00