

## **Supplemental Terms and Conditions to the City of La Crosse Standard Terms and Conditions**

### **Clause 1 – Definitions**

In this section “Contracting Party” or “Motorola” shall mean Motorola Solutions, Inc. as the party that is entering into this Agreement with the City of La Crosse.

Capitalized terms used in this Agreement have the following meanings:

- 1.1. “Acceptance Tests” means those tests described in the Acceptance Test Plan.
- 1.2. “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. La Crosse’s personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 1.3. “Beneficial Use” means when La Crosse first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 1.4. “Confidential Information” means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.
- 1.5. “Contract Price” means the price for the System, excluding applicable sales or similar taxes.
- 1.6. “Effective Date” means that date upon which the last Party executes this Agreement.
- 1.7. “Equipment” means the equipment that La Crosse purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.
- 1.8. “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).
- 1.9. “Infringement Claim” means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.
- 1.10. “Motorola Software” means Software that Motorola or its affiliated company owns.
- 1.11. “Non-Motorola Software” means Software that another party owns.
- 1.12. “Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

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

1.14. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.

1.15. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.

1.16. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

1.17. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

1.18. "System Acceptance" means the Acceptance Tests have been successfully completed.

1.19. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first

## **Clause 2 - Standard of Performance**

Motorola agrees to perform the services provided under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Motorola agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of the Agreement.

## **Clause 3 – Fully Qualified**

Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

## **Clause 4 – Scope of Services**

Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

## **Clause 5 – Change of Scope**

The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

## **Clause 6 – Compensation**

Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Each invoice will be a milestone payment based on an agreed milestone payment schedule (See Supplemental Terms and Conditions Exhibit B). The final payment of the balance due the Contracting Party for the completed service shall be per the payment milestones in Exhibit B.

## **Clause 7 – Taxes, Social Security, Insurance and Government Reporting**

Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

## **Clause 8 - Termination for Cause**

8.1 **DEFAULT.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. The defaulting party will provide a written cure plan that will be submitted to the non-defaulting party for review and approval. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If La Crosse is the defaulting Party, Motorola may stop work on the project until it approves the La Crosse's cure plan. If Motorola is the defaulting party, the City shall immediately stop any and all subsequent payments to Motorola until the City approves the Motorola cure plan.

8.2 **TERMINATION.** If a defaulting Party fails to cure the default as provided above in "Default by a Party", unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. In addition, if Motorola is the defaulting party, the City shall retain the hardware, software, and work product paid for by the City up to the date of termination as evidenced by paid invoices, bills of lading, purchase orders, or similar documentation. Motorola ship to the City any and all hardware, software, or work product previously paid for by the City but not shipped or received by the City as of the termination date.

## **Clause 9 - Termination for Convenience**

La Crosse may terminate this Agreement for convenience (in whole or part) at any time. To exercise this right, La Crosse must provide to Motorola formal written notice at least thirty (30) days in advance of the effective date of the termination. The notice must explicitly state the effective date of the termination and whether the contract termination is in whole or in part, and if in part, which part is being terminated. If La Crosse exercises this right to terminate for convenience, it will be liable to pay Motorola for (1) the portion of the Contract Price attributable to the Equipment and/or Software delivered, and all services performed, on or before the effective date of the termination; and (2) reasonable costs and expenses that Motorola would in good faith incur as a result of the termination of the Agreement, including but not limited to costs and expenses associated with cancellation of subcontracts, restocking fees, removal of installation or test equipment, etc. specifically related to this Agreement and/or the recoverable costs and expenses attributable to the termination of the Agreement are Notwithstanding the above, La Crosse shall have no right to terminate this Agreement if Motorola has given La Crosse a notice of default and such default has not been cured.

## **Clause 10 – Safety**

Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

#### **Clause 11 - Delays**

FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. "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). 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 thirty (30) 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.

#### **Clause 12 – Opinions of Cost**

Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

#### **Clause 13 – Use of La Crosse Property**

Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

#### **Clause 14 - Insurance**

Motorola shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$10,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$5,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate;
- 4) To the extent that Motorola employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits; and

On the certificate of insurance, La Crosse shall be included as an additional insured on any General Liability Insurance, and Automobile Insurance. The certificate must state the following: The City of La Crosse, its officers, employees, shall be Additional Insureds. After execution of the Agreement, Motorola shall file with La Crosse, a certificate of insurance issued by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include a blanket additional insured endorsement. Motorola shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy.

## **Clause 15 - Indemnification**

15.1 Motorola will indemnify, defend and hold La Crosse 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 La Crosse to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if La Crosse gives Motorola prompt, written notice of any the claim or suit. La Crosse will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of La Crosse from liabilities that are in any way related to Motorola's performance under this Agreement.

15.2 Motorola will defend at its expense any suit brought against La Crosse to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: La Crosse promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and La Crosse providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against La Crosse by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

15.3 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for La Crosse the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or if neither (a) or (b) is available under commercially reasonable terms then; or (c) accept the return of the Motorola Product and grant La Crosse a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

15.4. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with La Crosse'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 Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by La Crosse to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to La Crosse extend in any way to royalties payable on a per use basis or the La Crosse's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from La Crosse from sales or license of the infringing Motorola Product.

15.5. This Section provides La Crosse's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. La Crosse has no right to recover and Motorola 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 are subject to and limited by the restrictions set forth in Clause 55.

## **Clause 16 – No Personal Liability**

Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

**Clause 17 – Independent Contractors**

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

**Clause 18 – Governing Law**

This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its rights to challenge venue.

**Clause 19 – Jury Trial Waiver**

The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

**Clause 20 - Notification**

Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.

**Clause 21 – Severability**

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

**Clause 22 - Assignment, Sublet, and Transfer**

Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of La Crosse. In addition, in the event Motorola separates one or more of its businesses (each a “Separated Business”), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

### **Clause 23 - No 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.

### **Clause 24 - Subcontracting**

Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement. Motorola shall provide a list of subcontractors to the City of La Crosse.

### **Clause 25 - Conflicts of Interest**

Motorola is a publicly traded corporation with billions of dollars in annual sales globally, employing thousands of workers worldwide and having thousands of shareholders. Because of its size and scope of operations, it is foreseeable that some such operations could be deemed a conflict. However, while Motorola does not maintain an accessible record of all operations in a format that would enable it to disclose a potential conflict at this time, Motorola is not aware of any such conflict.

### **Clause 26 – Non-Discrimination**

Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made

### **Clause 27 – Political Activities**

Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

### **Clause 28 – Governmental Approvals**

Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner

required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

### **Clause 29 -Entire and Superseding Agreement**

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 executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, or a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. 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 La Crosse 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. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions including the Supplemental Terms and Conditions, the Supplemental Terms and Conditions shall take precedence over the Standard Terms and Conditions.

### **Clause 30 – Amendment**

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

### **Clause 31 - Implementation Schedule and Time of the Essence**

The parties will perform their respective responsibilities in accordance with the performance schedule.

### **Clause 32 – Time Computation**

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

### **Clause 33 - Notices**

33.1 Any notice or demand that must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance must be in writing and either personally delivered or sent 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.

33.2 Notice to the City shall be sent to:



To the City: Attn. City Clerk  
City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

Copy to: Attn. City Attorney  
City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

33.3 Notice to the Contractor shall be sent to:

Motorola Solutions, Inc.  
Attn: Law Department, 8th Floor  
1303 E. Algonquin Road  
Schaumburg, IL 60196  
Fax: (847)-576-0721

**Clause 34 - Incorporation of Proceedings and Exhibits**– Delete clause in its entirety

**Clause 35 - Access to Records**

Motorola acknowledges that La Crosse has the right to inspect certain Motorola books and record for the purpose of verifying performance in accordance with the terms of the contract. La Crosse's inspection is limited to the verification of shipment to invoice quantities and shipment receipts. After La Crosse provides thirty days' written notice, La Crosse may send a representative to a Motorola facility during normal business hours to conduct such limited review, or at La Crosse's request Motorola will provide copies of the specific documents to La Crosse's location for its review. Motorola books and records provided to La Crosse pursuant to this provision shall not be used, duplicated or disclosed to any other third party without the express written permission of Motorola. In no circumstances will Motorola be required to create or maintain documents not kept in the ordinary course of Motorola's business operations, nor will Motorola be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary to Motorola.

**Clause 36 - Public Records Law**

Motorola understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. Motorola agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. This provision shall survive the termination of this Agreement.

**Clause 37 – Construction**

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

**Clause 38 - No Third-Party Beneficiary**

38.1 The Software License Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under the Software License Agreement, and no third party is deemed a beneficiary of the Software License Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software

included in the Software will be a direct and intended third party beneficiary of the Software License Agreement.

38.2 Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

#### **Clause 39 – Compliance With Law**

The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

#### **Clause 40 – Not Used**

#### **Clause 41 – Good Standing**

Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

#### **Clause 42 – Authority**

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

#### **Clause 43 – Execution of Agreement**

Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

#### **Clause 44 - Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. A facsimile copy or computer image, such as a PDF or tiff image, or a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

#### **Clause 45 - Survival**

The terms, conditions, and warranties contained in this Agreement (including the Supplemental Terms and Conditions) that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive. Such provisions may include but not be limited to the terms, conditions, and warranties pertaining to software licensing, disputes, indemnification and limitations of liability.

#### **Clause 46 - EXHIBITS**

The exhibits listed below are 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 E will be resolved in their listed order.

|           |   |
|-----------|---|
| Exhibit A | Motorola "Software License Agreement"   |
| Exhibit B | "Payment Schedule"  |
| Exhibit C | "Technical and Implementation Documents"  |
| C-1       | "System Description" dated _____  |
| C-2       | "Equipment List" dated _____  |
| C-3       | "Statement of Work" dated _____   |
| C-4       | "Acceptance Test Plan" or "ATP" dated _____                                     |
| C-5       | "Performance Schedule" dated _____  |
| Exhibit D | Service Statement(s) of Work and "Service Terms and Conditions" (if applicable) |
| Exhibit E | "System Acceptance Certificate"   |

**Clause 47      SCOPE OF AGREEMENT AND TERM**

47.1.   SCOPE OF WORK. Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. La Crosse will perform its contractual responsibilities in accordance with this Agreement.

47.2.   CHANGE ORDERS. Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

47.3.   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 Project Acceptance or expiration of the Warranty Period, whichever occurs last.

47.4.   ADDITIONAL EQUIPMENT OR SOFTWARE. For three (3) years after the Effective Date, La Crosse 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 at shipment, warranty will commence upon delivery, and payment is due within twenty (20) days after the invoice date. Motorola will send La Crosse an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, La Crosse 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.

47.5.   MAINTENANCE SERVICE. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit D. Those services and support are included in the Contract Price. If La Crosse wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If La Crosse wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

47.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to La Crosse solely in accordance with the Software License Agreement. La Crosse hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

47.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to La Crosse in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola 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. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to La Crosse in accordance with, and La Crosse agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by La Crosse, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to La Crosse a copy of the applicable standard license (or specify where that license may be found); and provide to La Crosse a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

47.8. **SUBSTITUTIONS.** At no additional cost to La Crosse, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to La Crosse. Any substitution will be reflected in a change order. La Crosse reserves the right to accept or reject any and all proposed substitutions.

47.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), La Crosse has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. La Crosse may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services La Crosse is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after La Crosse delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

#### **Clause 48 PERFORMANCE SCHEDULE**

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, La Crosse authorizes Motorola to proceed with contract performance.

#### **Clause 49 CONTRACT PRICE, PAYMENT AND INVOICING**

49.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$\_\_\_\_\_. If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction or increase in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

49.2. INVOICING AND PAYMENT. Motorola will submit invoices to La Crosse according to the Payment Schedule. Except for a payment that is due on the Effective Date, La Crosse will make payments to Motorola within thirty (30) days after the date of each invoice. La Crosse 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 Motorola Solutions, Inc. is 36-1115800.

49.3 FREIGHT, TITLE, AND RISK OF LOSS. Title to the Equipment will pass to La Crosse upon shipment. Title to Software will not pass to La Crosse at any time. Risk of loss will pass to La Crosse upon delivery of the Equipment to La Crosse at the designated address listed below in clause 49.4. Motorola will pack and ship all Equipment in accordance with good commercial practices.

49.4 INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to La Crosse at the following address:

\_\_Equipment will be shipped to address(s) as mutually agreed by the parties

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The address which is the ultimate destination where the Equipment will be delivered to La Crosse is:

\_\_Equipment will be shipped to address(s) as mutually agreed by the parties

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The Equipment will be shipped to La Crosse at the following address (insert if this information is known):

\_\_Equipment will be shipped to address(s) as mutually agreed by the parties

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La Crosse may change this information by giving written notice to Motorola.

**Clause 50 SITES AND SITE CONDITIONS**

50.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, La Crosse will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist La Crosse in the local building permit process.

50.2. SITE CONDITIONS. La Crosse will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, La Crosse will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the

work site and advise La Crosse of any apparent deficiencies or non-conformities with the requirements of this Section.

50.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

#### **Clause 51 TRAINING**

Any training to be provided by Motorola to La Crosse will be described in the Statement of Work. La Crosse will notify Motorola immediately if a date change for a scheduled training program is required.

#### **Clause 52 SYSTEM ACCEPTANCE**

52.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to La Crosse at least twenty-one (21) calendar days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

52.2. 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 La Crosse believes the System has failed the completed Acceptance Tests, La Crosse will provide to Motorola a written notice that includes the specific details of the failure. If La Crosse does not provide to Motorola a failure notice within thirty (30) 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.

52.3. BENEFICIAL USE. La Crosse acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if La Crosse begins using the System before System Acceptance. Therefore, La Crosse will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, La Crosse assumes responsibility for the use and operation of the System.

52.4 FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed (this includes the thirty (30) day problem free operational period as identified in the Motorola Solutions, Inc proposal). When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

#### **Clause 53 REPRESENTATIONS AND WARRANTIES**

53.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or

Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola'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 La Crosse changes to load usage or configuration outside the Specifications.

53.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within La Crosse's control, this warranty expires eighteen (18) months after the shipment of the Equipment. Warranty for early shipped equipment shall start at with the City's final acceptance of the system.

53.3. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within La Crosse's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. 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 SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

53.4. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; La Crosse'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.

53.5. **WARRANTY CLAIMS.** To assert a warranty claim, either CSW through La Crosse or LaCrosse must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to La Crosse—[this includes any Motorola expended labor and or Motorola travel expenses to address a valid warranty claim during the warranty period]) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice La Crosse for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

53.6. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

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

#### **Clause 54      DISPUTES**

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

54.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

54.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of 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. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

54.3 **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

54.4. **LITIGATION, VENUE and JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

54.5. **CONFIDENTIALITY.** All communications pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. 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.

#### **Clause 55      LIMITATION OF LIABILITY**

Except for personal injury, death or willful misconduct, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA**



PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than three (3) years after the accrual of the cause of action, except for money due upon an open account.

## **Clause 56      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

56.1. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, the parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

56.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola 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 Motorola in connection with providing to La Crosse the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to La Crosse any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to La Crosse, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. La Crosse 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.

## **Clause 57      GENERAL**

57.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by La Crosse except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to La Crosse and La Crosse will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. La Crosse will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

57.2. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** Motorola will provide La Crosse with Administrative User Credentials. La Crosse agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. La Crosse is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. La Crosse may

be asked to provide valid Administrative User Credentials when in contact with Motorola System support. La Crosse understands that changes made as the Administrative User can significantly impact the performance of the System. La Crosse agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under the Agreement or its Maintenance and Support Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill La Crosse and La Crosse will pay Motorola on a time and materials basis for resolving the issue.

The Parties hereby agree to include these supplemental terms and conditions to the La Crosse City Standard terms and conditions contract dated \_\_\_\_\_.

**Motorola Solutions, Inc.**

**City of La Crosse**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### **SOFTWARE LICENSE AGREEMENT**

This Exhibit A, Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and City of La Crosse, Wisconsin ("Licensee").

For good and valuable consideration, the parties agree as follows:

#### **Section 1 DEFINITIONS**

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

## **Section 2 SCOPE**

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

## **Section 3 GRANT OF LICENSE**

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

## **Section 4 LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

## **Section 5 OWNERSHIP AND TITLE**

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to

Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

## **Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. The commencement date and the term of the Software warranty will begin with final system acceptance for the software provided with the System (The Software warranty for software licensed after the System Acceptance shall be a period of ninety (90) days from Motorola's shipment of the software) (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

## **Section 7 TRANSFERS**

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

## **Section 8 TERM AND TERMINATION**

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this

Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

## **Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS**

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

## **Section 10 CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

## **Section 11 LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 12 NOTICES**

Notices are described in the Primary Agreement.

## **Section 13 GENERAL**

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or

technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the Software Licenses Agreement and the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8 SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

## Exhibit B

### PAYMENT SCHEDULE

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

1. 25% of the Contract Price minus Subscribers due upon contract execution;
2. 25% of the Contract Price minus Subscribers due upon shipment of equipment;
3. 30% of the Contract Price minus Subscribers due upon installation of equipment;
4. 5% of the Contract Price minus Subscribers upon system acceptance or start of beneficial use;  
and
5. 5% of the Contract Price minus Subscribers due upon Final Acceptance.

Subscribers will be billed separately upon shipment to customer designated ship-to location.

Motorola reserves the right to make partial shipments of equipment and to request payment upon shipment of such equipment. In addition, Motorola reserves the right to invoice for installations or civil work completed on a site-by-site basis, when applicable. The City reserves the right to pre-approve any and all partial shipments and to approve any and all requests for partial payments.



**Exhibit C**

**TECHNICAL AND IMPLEMENTATION DOCUMENTS**

**Exhibit D**

**SERVICE STATEMENT(S) OF WORK (NOT APPLICABLE)**

**and**

**SERVICE TERMS AND CONDITIONS (NOT APPLICABLE)**

**Exhibit E**

**System Acceptance Certificate**

**La Crosse Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and La Crosse acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

La Crosse Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FINAL PROJECT ACCEPTANCE:**

Motorola has provided and La Crosse has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

La Crosse Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_