REPORT TO MAYOR AND COUNCIL **NO: 11-149**

Council Meeting: July 19, 2011

SUBJECT: Award of Contract for the Maintenance of the City's Radio Communication Systems (F1006-120)

BACKGROUND

Approval is requested for the award of a one-year contract in the amount of $140,958 to Motorola, Inc., to maintain the City's Motorola radio communication systems for the Information Technology Department. This cost represents an 8% reduction from last year's contract due to the removal of 68 obsolete radios no longer supported by Motorola. The radios were replaced by Verizon push-to-talk phones as referenced in a contract awarded by Council on September 14, 2010 (RTC 10-241).

DISCUSSION

The City's radio communication systems consist of two major components for which ongoing maintenance is required:

- The emergency communication system used by the Department of Public Safety; and
- The non-emergency communication system used by the Department of Public Works.

The proposed maintenance and support contract covers the radio units, infrastructure, base stations, chargers and consoles. The total number of radios in service is 396, of which 328 are used by Public Safety and 68 by Public Works. Also included is the maintenance of the Sunnyvale Amateur Radio Emergency Services (SARES) repeater system equipment installed for the Department of Public Safety. A list of equipment to be maintained is included in the attached draft Service Agreement, which also describes the services to be provided.

Section 2.08.070 (b) of the Sunnyvale Municipal Code exempts from competitive bidding those situations where the City's requirements can be met solely by a single source. Much of the equipment and interfaces used in both the emergency and non-emergency systems is proprietary Motorola technology, and support is available only through Motorola.

FISCAL IMPACT

Total cost to the City for a one–year contract will not exceed $140,958. Funds are budgeted in Information Technology Program 747 – Infrastructure Service and Support.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council award a contract, in substantially the same form as the attached draft and in the amount of $140,958 to Motorola, Inc. for maintenance of the City's radio communications systems.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Cuong Nguyen
Director of Information Technology

Approved by:

Gary M. Luebbers
City Manager

Attachment

A. Draft Services Agreement

MOTOROLA SOLUTIONS

SERVICES AGREEMENT

Attn: National Service Support/4th fl
1 301 East Algonquin Road
(800) 247-2346

Contract Number: S00001001270
Contract Modifier: RN14-MAR-11 14:10:10

Date: 06/22/2011

Company Name:	Sunnyvale, City Of
Attn:	
Billing Address:	P O Box 3707
City, State, Zip:	Sunnyvale,CA,94088
Customer Contact:	
Phone:	

Required P.O.:	Yes
Customer # :	1011862704
Bill to Tag # :	0001
Contract Start Date:	07/01/2011
Contract End Date:	06/30/2012
Anniversary Day:	Jun 30th
Payment Cycle:	QUARTERLY
Tax Exempt:	Pays All Taxes
PO # :	TBD

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
	SVC02SVC0028C	SP - FSO MAINTENANCE SERVICES	$494.39	$5,932.68
1		CENTRAL ELECTRONICS BANK (CEB)		
	SVC01SVC0017C	LOCAL RADIO COMBO W/PICK-UP/DLVRY	$5,289.97	$63,479.64
223	SVC154AC	ENH: ONSITE OPTION		
39	SVC27AC	XTS5000		
10	SVC323AC	CONSOLETTE-PICK UP & DELIVERY		
1	SVC619AA	DESKTRAC, DESKTRAC 800 CONSOLETTE		
20	SVC619AB	XTL5000 - MOBILE		
2	SVC645AA	MCS2000		
184	SVC647AA	MTS2000		
83	SVC687AA	SPECTRA (EXCEPT SPECTRA ASTRO & SPECTRA RR)		
9	SVC690AA	SPECTRA ASTRO CONSOLETTE		
85	SVC985AA	MOBILE PICK UP AND DELIVERY		
	SVC01SVC1102C	DISPATCH SERVICE	$192.18	$2,306.16
1	SVC242AC	ENH: DISPATCH CENTER LOCATION		
9	SVC244AA	ENH: CONVENTIONAL SITE		
	SVC01SVC1410C	ONSITE INFRASTRUCTURE RESPONSE	$4,711.90	$56,542.80
14	SVC180AD	CONSOLE INTERFACE UNIT		
6	SVC208AD	DIGITAC COMPARATOR		
9	SVC218AA	SITES		
16	SVC219AA	STATION(S)		
12	SVC224AA	REMOTES		
6	SVC237AD	GOLD SERIES ELITE OPS		
3	SVC244AD	NETCLOCKS/RUBIDIUM/GPS		
1	SVC986AA	DISPATCH CENTER LOCATION		
	SVC02SVC0015C	SP - SUBSCRIBER REPAIR - LOCAL	$1,049.76	$12,597.12
9		BATTERY		
	SVC02SVC0016C	SP - PAGING REPAIR - FIELD	$8.32	$99.84
1		MINITOR PAGER		

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - Recurring Services	$11,746.52	$140,958.24
	Subtotal - One-Time Event Services	$ .00	$ .00
	Total	$11,746.52	$140,958.24
Coverage of and repairs to equipment specified on this contract will be provided solely based on parts availability. In the event that replacement parts cannot be obtained, the restoration of the equipment or its failed components may be impossible. Further, if the equipment cannot, in Motorola's reasonable opinion be properly or economically serviced for any reason, Motorola may modify the Scope of Services related to such equipment; remove such equipment from the Agreement; or increase the price to service such equipment. Motorola disclaims all liability and responsibility for system or device failure issues due to the unavailability of parts.	Taxes	-	-
	Grand Total	$11,746.52	$140,958.24
	THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.		
	Subcontractor(s)	**City**	**State**
	MOTOROLA CALIFORNIA REGION DO 099	TOLUCA LAKE	CA
	MOTOROLA SYSTEM SUPPORT CTR-CALL CENTER DO066	SCHAUMBURG	IL

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

AUTHORIZED CUSTOMER SIGNATURE TITLE DATE

CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE(SIGNATURE) TITLE DATE

Julie O'Rourke 650-525-1329

MOTOROLA REPRESENTATIVE(PRINT NAME) PHONE

Company Name: Sunnyvale, City Of
Contract Number: S00001001270
Contract Modifier: RN14-MAR-11 14:10:10
Contract Start Date: 07/01/2011
Contract End Date: 06/30/2012

Service Terms and Conditions

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

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

Section 2. DEFINITIONS AND INTERPRETATION
2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

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

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

Section 3. ACCEPTANCE
Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES
4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

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

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

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

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

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

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

Section 5. EXCLUDED SERVICES
5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no

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

Section 6. TIME AND PLACE OF SERVICE
Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge,a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement,the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services,Customer agrees to reimburse Motorola for those charges and expenses.

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

Section 8. PAYMENT
Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9. WARRANTY
Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION
10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

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

Section 11. LIMITATION OF LIABILITY
Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.
12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order,acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS
13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

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

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

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS
Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters

Section 15. COVENANT NOT TO EMPLOY
During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law

Section 16. MATERIALS, TOOLS AND EQUIPMENT
All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. GENERAL TERMS
17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

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

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

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

17.5. Motorola may subcontract any of the work,but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. 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 Customer. 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

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.
Revised Jan 1, 2010