CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
09 APR 20 PM 2:58

DEPARTMENT: INFORMATION TECHNOLOGY

AGENDA DATE: April 28, 2009

CONTACT PERSON/PHONE: GARY GORDIER, CIO & IT DIRECTOR/541-4288
Jerrence Freiburg, Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: ALL

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

Request that the Purchasing Manager, Financial Services, Purchasing Division, be authorized to issue a Purchase Order to Motorola, Inc. the current provider of the Motorola Depot Services and Depot Repair for public safety subscriber units for the maintenance support of these installed and assigned components of the public safety Motorola 800 MHz public safety radio system. These units are the standardized platform used by the public safety first responders throughout the city. This standardization allows certified COEP staff to work on the equipment providing savings to the City by allowing those units which can be repaired locally to be done so in a cost effective manner while insuring those voice units sent to the Motorola Depot Services and data units sent to Depot Repair will be repaired by the manufacturer. These services are provided by the use of a pre-established budgeted amount of money covering equipment and labor. These agreements allow for an additional 10% volume discount over the negotiated State of Texas DIR Contract providing additional savings for the maintenance and support of the 4,881 voice radios and 1,038 data units assigned and installed throughout the City. The COEP Police Department, Fire Department, Airport, Health Department, and Office of Emergency Management use these Motorola radio subscriber units. The IT Department has budgeted and will pay for the maintenance of these units. This will insure the continued functionality of high priority public safety systems, voice and data, which support the first responders of the COEP. In addition the issuance of the Purchase Order will provide continued support in a cost effective, timely and reliable manner. Motorola Inc., is the H-GAC contractor under Contract No. RA01-08. Total Amount $120,000.00.

Additionally, it is requested authorization for City staff to negotiate, City Attorney's Office to review, and the City Manager be authorized to execute any related contract documents and agreements necessary during the contract.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The PO is funded by the approved FY09 IT Budget. The purchasing vehicle is the State of Texas DIR providing maintenance discount rates to the City of El Paso and an additional 10% discount via the depot services established for voice and data units. As the manufacturer Motorola guarantees the tracking and shipping costs for the units sent to the depot services facility insuring the units are worked on by certified Motorola employed technicians. In addition, a program allowing the technicians of the Telecommunications Division of the COEP are provided training and certification on all voice and data units allowing cost effective in-house support for units which can be repaired locally. The Purchase Order required will provide support for both hardware and software associated with these systems installed on voice and data subscriber units used throughout the city

supporting the Police Department, Fire Department, Airport, Health Department, and the Office of Emergency Management. El Paso's strategic location as the largest international metroplex in the United States, its strong military presence, and its geographical location along a major east-west interstate arterial makes accessing the voice and data public safety 800 MHz radio system critical to the operation of the COEP and mandatory for the safety of First Responders and citizens of the community.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
Total Estimated Amount Not to Exceed $120,000.00
01101 39010352 – 502229 - $120,000.00

BOARD / COMMISSION ACTION:

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Gary Gordier, CIO and IT Director

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

PURCHASING DEPARTMENT

DATE: April 17, 2009

TO: Municipal Clerk

FROM: **Terrence Freiburg** Ray Heredia

Purchasing Manager Procurement Analyst

Please place the following item on the Consent Agenda for the

Council Meeting of **April 28, 2009**.

Item should read as follows: Request that the Purchasing Manager, Financial Services be authorized to issue a purchase order to Motorola. Inc., the H-GAC contractor, under contract number RA01-08 for Motorola Radio Repair Bank for maintenance of all Public Safety and Transit voice and data radio subscriber units. Total estimated amount not to exceed $120,000.00.

The participation by the City of El Paso in the Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Program was approved by Mayor and City Council on May 8, 2007.

Award amount is $120,000.00

Funding Source: 39010352-01101-502229 Telecommunications-Operating Account

Department: Communications

SPECIAL INSTRUCTIONS:

Municipal Clerk's Use ITEM NO.

RADIO COMMUNICATION/EMERGENCY RESPONSE & MOBILE INTEROPERABLE EQUIPMENT
A CONTRACT BETWEEN

HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas

AND

MOTOROLA, INC.
Farmers Branch, Texas

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND **Motorola, Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 1507 LBJ Freeway, Suite 700, Farmers Branch, Texas 75234.

WITNESSETH

WHEREAS: The **H-GAC** enters into this Contract as Agent for participating governmental agencies, hereinafter referred to as **END USER**, for the purchase of **Radio Communication/Emergency Response & Mobile Interoperable Equipment** offered by the **CONTRACTOR**; and

WHEREAS: The **CONTRACTOR** offers to sell **Radio Communication/Emergency Response & Mobile Interoperable Equipment** through the **H-GAC** Contract to End Users; and

WHEREAS: The Contract shall be in effect for a period beginning January 1, 2008 through December 31, 2009, subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**; and now

THEREFORE: **H-GAC** and the **CONTRACTOR** do hereby agree as follows:

*** GENERAL PROVISION ARTICLES 1 - 23 ***

ARTICLE 1: IDENTIFICATION OF CONTRACT DOCUMENTS

The Contract shall be in effect for **Radio Communication/Emergency Response & Mobile Interoperable Equipment** listed in Proposal Specifications numbered **RA01-08**, including any relevant suffixes, and shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including Attachment A, and Attachment B (Motorola Standard Equipment Warranty)
2. **CONTRACTOR'S** Response to Proposal No.: **RA01-08**
3. Proposal Specifications No.: **RA01-08**
4. System Purchase Agreements
5. Motorola Software License

The terms and conditions, specifications, manufacture, delivery, warranty, training and service for **H-GAC** and the **END USER** shall be fulfilled in compliance with this Contract including, but not limited to Proposal Specifications, Terms and Conditions, and **CONTRACTOR'S** response opened October 4, 2007 unless specifically changed within the text of this Contract Form.

ARTICLE 2: LEGAL AUTHORITY

The **CONTRACTOR** and **H-GAC** warrants and assures one another that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind both parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 3: APPLICABLE LAWS

Both parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances and ordinances, and laws in effect or promulgated during the term of this Contract. The **CONTRACTOR** agrees to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Contract.

ARTICLE 4: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or the **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of the Contract shall be construed as making the **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom.

CONTRACTOR shall notify **H-GAC** of any law suits filed against it which involves products sold pursuant to this Contract, or which, if successful, would adversely affect its financial condition. A law suit which includes a specific demand for an amount in excess of $250,000 which would not be covered by insurance shall automatically be considered a law suit which, if successful, would adversely affect the financial condition of the sued party.

ARTICLE 5: TITLES NOT RESTRICTIVE

The titles assigned to the various articles of this Contract are for convenience only and are generally descriptive of the matters following. Titles shall not be considered restrictive of the subject matter of any section, or part of this Contract.

ARTICLE 6: SUBCONTRACTS

The Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of **H-GAC**.

H-GAC shall not unreasonably delay or withhold acceptance of a proposed assignment of a proposed subcontractor.

The Contractor acknowledges that **H-GAC** is not liable to any subcontractor's of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Contract as if the performance rendered was rendered by the Contractor.

ARTICLE 7: EXAMINATION AND RETENTION OF RECORDS

The **CONTRACTOR** shall maintain during the course of the work, complete and accurate records of all of the **CONTRACTOR'S** costs and documentation of items which are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or designated public accounting firm, the State of Texas, and the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of the **CONTRACTOR**. Failure to provide access to records may be cause for termination of the Contract. **CONTRACTOR** agrees that its books and records, as they pertain to work done or items supplied present to the Purchase Order or Contract shall at all reasonable hours be subject to audit and inspection at the **CONTRACTOR'S** facility by **H-GAC** and/or **END USER**. This audit shall be limited to the verification of invoice quantities to shipments and shipment receipts. Except as otherwise provided by law, nothing contained herein shall authorize **H-GAC** and/or **END USER** to audit particular books or **CONTRACTOR** insofar as such particular books or records contain confidential information regarding product costs.

The **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained.

The **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

ARTICLE 8: CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the Contractor may terminate its participation herein as authorized by Article 18.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between **H-GAC** and the Contractor in writing shall be incorporated into this Contract.

ARTICLE 9: DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract which are not disposed of by agreement shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with **H-GAC'S** final decision.

ARTICLE 10: SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 11: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with **H-GAC.**

ARTICLE 12: NON DISCRIMINATION AND EQUAL OPPORTUNITY

The Contractor agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Contract; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Contract.

ARTICLE 13: CRIMINAL PROVISIONS AND SANCTIONS

The **CONTRACTOR** agrees that it will perform the Contract in conformance with safeguards against fraud and abuse as set forth by the **H-GAC**, the State of Texas, and the acts and regulations of the funding entity. The **CONTRACTOR** agrees to promptly notify **H-GAC** of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify **H-GAC** of any accident or incident requiring medical attention arising from its activities under this Contract within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from **H-GAC**, if any, shall be reported to local law enforcement agencies and **H-GAC** within two (2) hours of discovery of any such act.

The **CONTRACTOR** further agrees to cooperate fully with **H-GAC**, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

ARTICLE 14: PURCHASE ORDERS ISSUED PURSUANT TO CONTRACTS

Through Interlocal Contracts, **H-GAC** offers governmental agencies **and qualifying non-profit corporations** the opportunity to participate in the **H-GAC** Cooperative Purchasing Program. Therefore, purchase orders may be executed by **END USERS** throughout the State. In addition, through Interstate Interlocal Contracts the Program is now made available for possible participation by **END USERS** beyond Texas.

ARTICLE 15: SCOPE OF SERVICES

The services to be performed by **CONTRACTOR** in the State of Texas are outlined within this Contract, Proposal specifications,

any Attachment, and Proposal Response. Any Change Order shall be stated in complete detail and submitted by **END USER** to **CONTRACTOR** and copied to **H-GAC**. No verbal Change Order shall be accepted by **CONTRACTOR** from any **END USER**.

ARTICLE 16: THE COMPLETE AGREEMENT

This Contract consists of the Contract text stated herein, the Proposal Specifications, including but not limited to Terms and Conditions, proposaler's/proposaler's response, including but not limited to, prices and options offered all of which are incorporated within the contract, and constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 17: LIMITATION ON LIABILITY

The **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER**, any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

Except for personal injury or death, Motorola's total liability whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular products sold hereunder with respect to which either refund the purchase price, repair or replace product(s) that are not as warranted. In no event will Motorola be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special, or consequential damages to the full extent such may be disclaimed by law.

ARTICLE 18: TERMINATION PROCEDURES

CONTRACTOR acknowledges that this Contract may be terminated under the following circumstances:

A. Convenience

H-GAC may terminate this **Contract** in whole or in part without cause at any time by written notice by certified mail to **CONTRACTOR** whenever for any reason **H-GAC** determines that such termination is in the best interest of **H-GAC**. Upon receipt of notice of termination, all services hereunder of **CONTRACTOR** and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, **CONTRACTOR** shall prepare final invoices within 30 calendar days of such termination reflecting the services actually performed which have not appeared on any prior invoice. Such invoices shall be satisfactory to the Executive Director or his designee. **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this **Contract**, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

CONTRACTOR may cancel or terminate this **Contract** upon thirty (30) days written notice by certified mail to **H-GAC**. **CONTRACTOR** may not give notice of cancellation after it has received notice of default from **H-GAC**. In the event of such termination prior to completion of this **Contract** provided for herein, **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this **Contract**, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

B. Default

H-GAC may, by written notice of default to **CONTRACTOR**, terminate the whole or any part of this Contract in any one of the following circumstances:

(1) If **CONTRACTOR** fails to perform the services herein specified within the time specified herein or any extension thereof; or

(2) If **CONTRACTOR** fails to perform any of the provisions of this Contract for any reason whatsoever, or so fails to make progress or otherwise violates this Contract that completion of services herein specified within the term of this Contract is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) calendar days (or such longer period of time as may be authorized by **H-GAC** in writing) after receiving written notice by certified mail of default from **H-GAC**.

In the event of such termination, all services of CONTRACTOR and its employees and subcontractors shall cease and **CONTRACTOR** shall prepare a final invoice reflecting the services actually performed pursuant to this Contract which have not appeared on any prior invoice. Such invoice must be satisfactory to the **END USER** and to the Executive Director of **H-GAC** or his designee. **END USER** reserves the right, in accordance with the terms and conditions of this **Contract**, to withhold from the payment

of said invoices for services actually performed and accruing to the benefit of **END USER**, as reflected on invoice, any compensation previously paid and any costs or damages incurred by **END USER** as a result of such default, including incremental costs that **END USER** will incur to have Purchase Order(s) completed by a person other than **CONTRACTOR**. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

C. Final Billing In the Event of Termination

CONTRACTOR shall fill all pending orders and then prepare final invoices reflecting the services actually performed pursuant to this Contract and to the satisfaction of **H-GAC'S** Executive Director or his designee. **END USER** will pay **CONTRACTOR**, in accordance with the terms and conditions of this **Contract**, for services actually performed and accruing to the benefit of **END USER** less any compensation previously paid. **H-GAC**, in accordance with the terms and conditions of this **Contract**, will invoice **CONTRACTOR** for any order processing charges due, and **CONTRACTOR** agrees to pay said order processing charges.

ARTICLE 19: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

ARTICLE 20: CONTRACTOR'S REPRESENTATIVE

CONTRACTOR'S representative(s) shall be the contact person(s) concerning all matters pertaining to **END USER** orders. Any change of representation shall be immediately communicated in written form to **H-GAC** by **CONTRACTOR**.

END USER will remit all payments to **CONTRACTOR** under this Contract. Under no circumstances shall checks be made payable to a representative. Should a representative submit invoices to **END USER** for reimbursement of costs relating to an **END USER** Purchase Order for products/services, the Invoice shall be forwarded to **CONTRACTOR**.

ARTICLE 21: REPORTING REQUIREMENTS

Upon request by **H-GAC**, **CONTRACTOR** shall provide monthly written reports to **H-GAC**. Such reports may include, but are not limited to the following; detailing of all orders received, scheduled production, and scheduled delivery under this contract.

If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any report or other documentation required by this Contract, or otherwise fails to satisfactorily render performances hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 22: MOST FAVORED CUSTOMER CLAUSE

If **MOTOROLA** at any time during a contract period, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products offered to **H-GAC** on a basis that provides prices more favorable than those provided to **H-GAC**, **MOTOROLA** shall within ten (10) business days thereafter notify **H-GAC** of that offering. The contract with **H-GAC** shall be deemed to be automatically amended and effective retroactively to the effective date of the most favorable contract, wherein **MOTOROLA** shall provide the same quantity discount to **H-GAC** and its End Users for equal or larger orders purchased the same quantity and under the same circumstances. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **MOTOROLA** believes any apparently more favorable price charged and/or offered a customer during the term of this agreement is not in fact most favored treatment, **MOTOROLA** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **MOTOROLA** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon the contract between **H-GAC** and **MOTOROLA** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices to **H-GAC**.

The most favored price structure set forth in this paragraph shall not apply to any pre-existing contracts Motorola has in the State of Texas. The term *"pre-existing contracts"* shall refer to contracts in existence as of the original effective date of the HGAC contract, i.e.1/1/08.

The Parties agree that the above MFC provision shall not apply to the sale of large communications systems (one million dollars ($1,000,000.00) and above). The term *"Communications System"* shall refer to a project that includes the sale of infrastructure hardware and/or software, user devices, and Motorola engineering and installation service. The contract for a "Communication System" will always have a Statement of Work and an Acceptance Test Plan.

The Parties accept the following definition of routine. *A prescribed, detailed course of action to be followed regularly; a standard procedure.*

ARTICLE 23: **INDEMNIFICATION**

The **CONTRACTOR** agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, the State of Texas, the United States Government and their respective board members, officers, agents, officials, and employees from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of and to the extent caused by the **CONTRACTOR'S** negligent acts or omissions under this Contract, the **CONTRACTOR'S** non-performance of this Contract, or the **CONTRACTOR'S** violation of any law, regulation or other standard incorporated herein. The **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against the **CONTRACTOR** relating to this Contract.

• PRODUCT SPECIFIC ARTICLES 24-46 •

ARTICLES 24, 25 AND 26 ARE COMBINED TO READ AS FOLLOWS:

PROCEDURAL STEPS ENUMERATED FOR SALES TO END USERS

1. All Cooperative Purchasing business will be processed in accordance with **H-GAC's** policies and procedures, at contracted prices, and shall include approved order processing charges.

2. **END USER** will access the Cooperative Purchasing Program through the **H-GAC** website and /or by submission of any duly executed purchase order to a contractor having a valid contract with **H-GAC** and in a format acceptable to **H-GAC**.

3. **END USER** will submit order(s) electronically through **CONTRACTOR'S** on-line ordering process or issue Purchase Order(s) directly to **CONTRACTOR** at contract prices, and also submit a copy to **H-GAC**.

4. The **H-GAC CONTRACTOR** will deliver products/services as specified by the contract between **CONTRACTOR** and **H-GAC**, and invoice each **END USER** for (1) products/services purchased and (2) **H-GAC'S** applicable order processing charge.

5. Upon delivery, acceptance, and receipt of an **H-GAC CONTRACTOR's** documented invoice, **END USER** shall pay the **H-GAC CONTRACTOR** the full amount of the invoice.

6. For orders of less than $100,000, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case, not later than sixty (60) calendar days after End User order is processed. Payments will be processed to **H-GAC** on a monthly basis. For orders of $100,000 or more, **CONTRACTOR** will promptly pay to **H-GAC** any order processing charges due, and in any case, not later than forty-five (45) calendar days after receipt of End User payment by **Motorola**.

7. Failure to promptly remit **H-GAC's** order processing charges may result in sanctions including, but not limited to, contract termination.

8. **CONTRACTOR** shall be responsible for delivery and acceptance of each unit by **END USER**, according to the requirements of the specifications, this Contract, and purchase order issued to **CONTRACTOR** by an **END USER**. All required equipment tests shall be borne by **CONTRACTOR**.

9. **CONTRACTOR** shall promptly provide **H-GAC** and **END USER** with all information pertaining to delivery schedules. **CONTRACTOR** shall also use its best efforts to expedite unit deliveries on shorter notice than set forth in its verification for any specific purchase order when requested.

10. All prices are F.O.B. **END USER'S** location with all transportation charges prepaid and included in any invoice.

11. All pricing shall be based on the current contract unless the **H-GAC CONTRACTOR** prior to receipt of **END USER's** purchase order for delivery of any products/services has received **H-GAC's** prior written approval for any price increases.

12. The **H-GAC CONTRACTOR** agrees to accept the terms of this agreement and to conduct all transactions based on pricing and other terms of the contract including, but not limited to, the applicable **H-GAC** order processing charge. The **CONTRACTOR** agrees to encourage **END USERS** to execute authorizing Interlocal contracts with **H-GAC**.

ARTICLE 27: **PRE-PAYMENTS AND DISCOUNTS**

1. Progress and pre-payment discounts offered by **CONTRACTOR** shall be fully disclosed to **END USER** by **CONTRACTOR'S** representative and subsequently listed on the **END USER'S** purchase order to **CONTRACTOR.**

   Discounts may be offered by **CONTRACTOR** based on similarly constructed products and quantity purchases. Discounts may be stated in either dollar amount or percentage and shall be applicable to **CONTRACTOR** defined number of similar units.

2. **CONTRACTOR** shall be the sole source of determination as to similar designation.

ARTICLE 28: LIABILITY INSURANCE

CONTRACTOR shall maintain proof of liability insurance in minimum amounts listed below and shall provide proof of said insurance to **H-GAC** upon request.

General liability	$1,000,000 per single occurrence
Product liability	$1,000,000 per single occurrence

Insurance coverage shall be in effect for the length of the contract and any extensions thereof, plus the number of months or days required to deliver any outstanding order after the close of the contract. Contractor shall promptly notify **H-GAC** of cancellation or changes in insurance coverage during the contract period.

ARTICLE 29: COMPLETION AND LIQUIDATED DAMAGES
(This Article does not apply to this Contract)

ARTICLE 30: COMPLIANCE WITH PROPOSAL SPECIFICATIONS

The contract herein provides certain details emphasizing the intent of the proposal specifications:

Warranties:
CONTRACTOR'S standard equipment warranty, as revised 4-1-00, shall be made a part of this Contract, a copy of which shall be attached to this Document. **H-GAC** reserves the right to examine the language in this standard warranty and to accept or reject any changes made after this date. **H-GAC** shall hold the **CONTRACTOR** responsible for the execution and effectiveness of all product warranty. **H-GAC** shall look only to the **CONTRACTOR** as the sole source for solution to problems arising from warranty claims. The **CONTRACTOR** agrees to respond directly to correction of warranty claims and to ensure reconciliation of warranty claims which have been assigned to a third party.

Selection of Components:
The selection of quality components shall be determined by the **CONTRACTOR.** Since durability and warranty provisions are an inherent consideration in the selection process, **H-GAC** and the **END USERS** subject themselves to a trust relationship with the **CONTRACTOR** to deliver a product which will comply with standards set for the specified product detail in the proposal specifications.

Contractor's Default:
Should the contractor default in providing the equipment as specified in the specifications, and in this contract, recourse may be exercised through the performance bond or other legal remedies.

Delivery to End User:
CONTRACTOR shall schedule delivery to **END USER** sites in coordination with the relevant **END USER's** site.

Accessories and Options:
All accessories and options listed in the Option Table shall become part of this contract.

ARTICLE 31: DOCUMENTATION

CONTRACTOR will provide **END USER** Agency complete operating manuals on all equipment ordered.

ARTICLE 32: MANUFACTURER PRICE DECREASES/INCREASES

1. Except as provided in **ARTICLE 35,** No price increases shall be allowed during the first twelve (12) months of this Contract period.
2. Any request for a price change must be submitted to **H-GAC** on **CONTRACTOR'S** letterhead, must be signed by a corporate officer, and must be received by **H-GAC** at least forty five (45) calendar days prior to the requested effective

date of the increase.

3. Price increase requests **MUST** be supported by documentation, acceptable to **H-GAC**, concerning **CONTRACTOR'S** actual cost increase.

4. **H-GAC** reserves the right to accept or reject any price change request.

In cases involving contract extensions exceeding sixty-one (61) days beyond the stated expiration date of this Contract, **CONTRACTOR** may request a price change based on the same conditions as stated above. However, the forty-five (45) day prior notice is waived and **H-GAC** will consider the request immediately on receipt.

ARTICLE 33: CONTRACTOR'S FIRMWARE/SOFTWARE

CONTRACTOR provides firmware/software only under license. **END USER** agencies will not own such firmware/software and will be authorized for its use only after proper completion of the **CONTRACTOR'S** Software Agreement Documentation except as **CONTRACTOR** agrees to sell the Source Code to the **END USER**.

ARTICLE 34: SYSTEM PURCHASE AGREEMENT

It is agreed that the scope of this Contract is limited to the procurement of equipment and services defined in Motorola's Proposal Response opened October 4, 2007 in response to the Proposal Specifications. It is further agreed that **END USERS** may use this Contract to purchase systems and/or services. In such event, a separate agreement, making reference to this Contract, may be negotiated between the **CONTRACTOR**, and the **END USER**. Said document shall be entitled, ***"System Purchase Agreement"***.

Using prices for products and services established in the Proposal Response opened October 4, 2007, each ***"System Purchase Agreement"*** shall define the associated costs for all such services. The ***"System Purchase Agreement"*** shall set forth all specific details of the negotiated agreement. It may include, but is not limited to the following: • division of responsibilities, • sites, • surface/subsurface conditions, • system design technical requirements, • performance and schedules, • coverage, • warranties, • installation and implementation, • list of deliverables, • Title and Risk of Loss, • FCC Licensing, • software licensing, • acceptance criteria, • payment terms, • documentation requirements, • changes, • customer delay, • termination for convenience/default, • limitation of liability, • training, • bonds, and • maintenance.

ARTICLE 35: SUBSTITUTIONS AND DEVIATIONS

H-GAC agrees to the substitution of **Contractor's** new published list prices to include new offerings. Along with the price book, **Contractor** will continue to provide a static discount structure to each part using published APC's (assigned product codes) consistent with current discounts. The new pricing, submitted in CD format, will be updated bi-monthly and provide a published sheet containing any changes within the CD format. Upon receipt of the CD, **H-GAC** will notify **Contractor** within five (5) business days if the price increases are not acceptable, or if **H-GAC** requires more information to make the determination.

ARTICLE 36: BLANKET PERFORMANCE BOND

(This Article does not apply to this Contract)

ARTICLE 37: PERFORMANCE BOND ISSUED TO END USER

Optional Performance Bonds may be purchased and issued to the relevant **END USER** for an amount equal to the value of each purchase order.

ARTICLE 38: INSPECTIONS BY H-GAC

CONTRACTOR agrees to provide access to **H-GAC** authorized personnel for inspection of facilities and audit of purchase orders during the Contract period and for a period extending to the completion of any and all equipment ordered under the terms of this contract. Site inspections shall be arranged not less than ten (10) calendar days before said inspections and shall state the name(s) of persons who will conduct the inspections. **CONTRACTOR** shall not incur expenses relating thereto.

ARTICLE 39: PROPOSAL PRICES OFFERED BY CONTRACTOR

The pricing listed in **CONTRACTOR'S** Proposal Response as stated on ***Forms D through F*** shall be applicable to all products ordered under the terms of this Contract. Additional discounts may be offered at the discretion and sole liability of the **CONTRACTOR**.

ARTICLE 40: CHANGE ORDER PROVISIONS

Texas statutes limit change orders to an amount not exceeding twenty-five (25%) of the proposal price. A decrease of like amount is also provided. For the purpose of **H-GAC** procedures, the proposal price includes the base proposal amount and all priced options submitted with the proposal response.

ARTICLE 41: ORDER CANCELLATION

In the event **CONTRACTOR** is unable to deliver a product/service by the scheduled delivery date, and the delay is caused by factory production delays exceeding one hundred twenty (120) days from the delivery date set in the purchase order, said product/service shall be subject to possible cancellation by **END USER**.

CONTRACTOR shall notify **END USER** and **H-GAC** of any conditions of Force Majeure that might cause delay in delivery of products/services. **[See Article 11: "Force Majeure"]**

ARTICLE 42: ASSIGNMENT OR SUBLEASE OF RIGHTS

Neither party shall assign or sublease any rights under this contract without the written consent of the other party. **[See Article: "Subcontracts"]**

ARTICLE 43: CHANGE OF OWNERSHIP

The **CONTRACTOR** shall notify **H-GAC** of any material change in name, ownership or control. Such notification shall be supplied within ten (10) business days of such change.

ARTICLE 44: NON-COMPETITION CLAUSE

A **CONTRACTOR'S** published or unpublished options may not compete with another **CONTRACTOR'S** base proposal award.

ARTICLE 45: PRODUCER PRICE INDEX APPLIED TO CONTRACT EXTENSIONS

Consideration of any contract extension exceeding sixty-one (61) days beyond the stated expiration date of the original contract period, may be subject to possible increases/decreases in the original proposal prices offered by the **CONTRACTOR**. The price increases/decreases shall not exceed the Producer Price Index (PPI) for the latest available reporting period prior to expiration of the original contract.

The relevant product code, as defined by the criteria of the U. S. Department of Labor's latest reporting period, shall be used to determine the maximum price increase/decrease for the length of the contract extension. **H-GAC** shall establish the date of the latest available report in determining the rate of increase/decrease based on direct communication with the U. S. Department of Labor.

ARTICLE 46: CONTRACT PERFORMANCE

CONTRACTOR must meet the following performance criteria at all times, and to **H-GAC's** complete satisfaction. Failure to do so may be considered to be non-compliant performance and may result in contract termination at **H-GAC's** sole discretion.

1. **CONTRACTOR** shall maintain sufficient qualified staff to process Purchase Orders, and to respond promptly by telephone, fax, and email.
2. **CONTRACTOR** shall participate in orientation and training as may be required by **H-GAC.**
3. **H-GAC** reserves the right to request that a new Sales Representative be assigned to the contract (Proposal Specifications, General Terms and Conditions).
4. **CONTRACTOR** shall provide toll free line(s) for access by **H-GAC's** End Users.
5. **Motorola** will use commercially reasonable efforts to encourage **H-GAC** End User Participants to purchase contracted items through the **H-GAC** Contract.
6. All Products/services sold and delivered will include all current manufacturer's standard features at no additional charge, and meet all **H-GAC** requirements and specifications in all respects.
7. Scheduled delivery dates will be met in all cases unless prevented by Force Majeure.

This contract, signed in two originals by both parties, shall become effective on the First day of January, 2008 and shall remain in effect for a period ending on the Thirty First day of December, 2009 at Midnight Central Time. The incorporated copies of Proposal Specifications numbered **RA01-08** Terms and Conditions, and Proposaler's Response documents as identified in Article 1, shall become part of this contract.

Signed for **Houston Galveston Area Council** Houston, TX

[redacted], Executive Director

Attest for **Houston Galveston Area Council** Houston, TX

Deidre Vick, Director of Public Services

Date: 2/13/2008

Signed for **Motorola, Inc.** Farmers Branch, TX

Date: 2/12/2008

Printed Name & Title: Edward Fuerst MSSI Vice President

Attest for **Motorola, Inc.** Farmers Branch, TX

Patricia Bellew

Date: 2/12/2008

Printed Name & Title: Territory Administrator