

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: 12/16/2014

**ITEM SUMMARY, JUSTIFICATION and/or SPECIAL CONSIDERATIONS**

Amendment of Award: Motorola Inc., Contract # MA-PO-1200000000000000284 Amendment #06 is required to extend the contract term to 09/28/2035, increase the contract amount by \$8,777,846.92, allow the use of two State of Arizona co-operative contracts or any co-operative contracts as options for substitutions or additional equipment/software purchase at lowest possible price, change notice information for the County, modify the post warranty services, modify the payment terms and add system upgrade agreement. Funding Source: Externally Funded Capital Projects (2004 General Obligation Bond Funds); Federal Grants and OEM Radio System Special Revenue Fund. Administering Department: Office of Emergency Management.

**BACKGROUND**

The contract was initially awarded by the Board of Supervisors on 04/07/2009 in the amount of \$60,837,050.00. Contract is for a five-year term and includes three additional five-year renewal periods of which one has been executed. The current contract termination date is 09/28/2019. As of 11/14/2014 the contract has an unused contract amount of \$17,742,575.81.

As requested by the Office of Emergency Management this amendment is required to 1) extend contract term to 09/28/2035; 2) increase contract amount by \$8,777,846.92; 3) allow the use of two State of Arizona co-operative contracts or any co-operative contracts as options for substitutions or additional equipment/software purchase at lowest possible price 4) change notice information for the County; 5) modify the post warranty services; 6) add system upgrade agreement and 7) modify the payment terms. The increase in contract amount is primarily related to the increased term of maintenance services from the original 5 year to the revised 20 year contract term. The source of funding for the post warranty maintenance services will be the PCWIN Special Revenue Fund. There will be no direct impact to the Pima County General Fund.

Effective Date:	12/16/2014	Cont # :	MA-PO-1200000000000000284-06
Termination Date:	09/28/2035	Effective:	12/16/2014
Original Contract Amount:	\$60,837,050.00	Term :	09/28/2035
Prior Amendment Amounts:	\$ 0.00	Cost :	\$ 8,777,846.92
This Amendment Amount:	\$ 8,777,846.92	Rev :	0
Revised Contract Amount:	\$69,614,696.92	Tot :	\$ 8,777,846.92
Contract Officer:	Nina Schatz, 724-8719, Procurement Department	NTE :	11/14/2014, 696.92
Payment System:	AMS	Timex :	YES
		Renewal:	06/01/2035
		Term :	09/28/2035

DEC 03 11 41 AM '14 PC CLK OF PD

CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_ ITEM NO. \_\_\_\_\_

To: COB - 12-3-14  
Agenda - 12-16-14  
(1)

<b>PIMA COUNTY OFFICE OF EMERGENCY MANAGEMENT</b>  <b>PROJECT:</b> PCWIN Voice Radio System  <b>CONTRACTOR:</b> Motorola Solutions, Inc.  <b>CONTRACT NO.:</b> MA-PO-12000000000000000284  <b>CONTRACT AMENDMENT NO.:</b> Six (06)	<b>CONTRACT</b>  NO. <u>MA-PO-12000000000000000284</u> AMENDMENT NO. <u>06</u> This number must appear on all invoices, correspondence and documents pertaining to this contract.
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<b>ORIG. CONTRACT TERM:</b> 09/29/2009 - 09/28/2014	<b>ORIG. CONTRACT AMOUNT:</b> \$60,837,050.00
<b>TERMINATION DATE PRIOR AMENDMENT:</b> 09/28/2019	<b>PRIOR AMENDMENTS:</b> \$ 0.00
<b>TERMINATION THIS AMENDMENT:</b> 09/28/2035	<b>AMOUNT THIS AMENDMENT:</b> \$ 8,777,846.92
	<b>REV. CONTRACT AMOUNT:</b> \$69,614,896.92

**CONTRACT AMENDMENT**

WHEREAS, COUNTY and CONTRACTOR entered into a Contract for services as referenced above; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to Article I – Term And Extension/Renewal/Changes have agreed to extend the current term for an additional sixteen (16) years; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to Article IV – Compensation and Payment, have agreed to increase the total compensation payable to CONTRACTOR to allow for the revised Post Warranty Maintenance Service for a period of twenty (20) years; and,

WHEREAS, COUNTY and CONTRACTOR, pursuant to Article V – Substitutions & Additional Equipment or Software, have agreed to allow for the use of two State of Arizona co-operative contracts or any other co-operative contracts as options for substitutions and additional equipment at lowest possible price ; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to Article XXII – Notice, have agreed to change the notice information for County; and.

WHEREAS, COUNTY and CONTRACTOR, pursuant to Exhibit A – Scope of Services, have agreed to modify the Post Warranty Services; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to Exhibit B – Price and Payment Terms, have agreed to modify the payment terms in accordance with Exhibit 1: Price and Payment Terms and Exhibit 2: System Upgrade Agreement (SUA) II Statement Of Work; and

WHEREAS, COUNTY and CONTRACTOR, pursuant to Exhibit D – Terms and Conditions for Maintenance, have agreed to add Exhibit 2: SUA II Statement of Work to include all associated appendices and modify the default and termination conditions.

NOW, THEREFORE, the parties agree as follows:

**CHANGE:** ARTICLE I – TERM AND EXTENSION/RENEWAL/CHANGES

Delete the last sentence of the first paragraph and change the contract termination date as follows:

From: "...shall terminate on September 28, 2019..."

To: "...shall terminate on September 28, 2035..."

**CHANGE: ARTICLE IV – COMPENSATION AND PAYMENT**

From: "...in an amount not to exceed sixty million eight hundred thirty seven thousand and fifty dollars (\$60,837,050.00)."

To: "...in an amount not to exceed sixty nine million six hundred fourteen thousand eight hundred ninety six dollars and ninety two cents (\$69,614,896.92)."

**CHANGE: ARTICLE V – SUBSTITUTIONS & ADDITIONAL EQUIPMENT OR SOFTWARE**

Delete the first sentence of the Additional Equipment or Software section in its entirety and replace with:

COUNTY may order additional equipment or software included in the original response to RFP #0802654, or the functional equivalent, and any equipment or software included in the State of Arizona contract numbers ADSP013-036880 (Two-Way Radios) and ADSP013-036613 (Radio Dispatch Console). Prior to five (5) years after System Acceptance, the pricing for the additional equipment and software will be the lower of the pricing set forth in this Contract, subject to Article IV (B), or the pricing in the State of Arizona contract. Thereafter, the pricing will be the pricing set forth in the State of Arizona contract or the pricing in any other cooperative use contract, subject to mutual agreement of the Parties.

**CHANGE: ARTICLE XXII – NOTICE:**

Remove COUNTY Notice in its entirety and replace with:

COUNTY:

PCWIN Executive Director, PCWIN Administration Office, Pima Emergency Communication and Operations Center, 3434 E. 22<sup>nd</sup> Street, Tucson, AZ 85713

COUNTY "Notice Also":

Pima County IT Deputy Director/Infrastructure Services, Pima Emergency Communication and Operations Center, 3434 E. 22<sup>nd</sup> Street, Tucson, AZ 85713

**CHANGE: EXHIBIT A SCOPE OF SERVICES / SECTION IV / MAINTENANCE SERVICE**

Delete the last sentence and replace with:

COUNTY has exercised its right under Article XXXIX to exclude from the post-warranty services all of the services listed in the original Post Warranty Maintenance Service Options Section of Exhibit B, with the exception of Technical Support, Nice Audio Logging Equipment, and the Additional Logging Recorder. These services will be provided for twenty (20) years following the end of the Warranty Period at the pricing set forth in the amended Post Warranty Maintenance Service section of Exhibit B. The services will be performed in accordance with the respective SOWs in Exhibit D and subject to the Exhibit D Terms and Conditions for Maintenance Services.

COUNTY has also agreed to purchase for a twenty (20) year period System Upgrade Agreement II (SUA II) services at the pricing set forth in the amended Post Warranty Maintenance Service section of Exhibit B. The services will be performed in accordance with Exhibit 2: SUA II Statement of Work (SOW), together with its Appendices, which have been added to Exhibit D and subject to the Exhibit D Terms and Conditions for Maintenance.

The post warranty services are also subject to the following:

No purchase orders or notices-to-proceed will be issued or required for services to be rendered during the twenty (20) year term.

At the end of the first (1<sup>st</sup>) year anniversary of the commencement of the SUA II services and at the end of the fourth (4<sup>th</sup>) year anniversary of the commencement of the Technical Support and the Nice Audio Logging Equipment services, and each year thereafter, a CPI percentage change calculation shall be performed. If the annual inflation rate increased by greater than five percent (5%) during the previous year, Motorola will have the right to increase the current year's and all future years' maintenance and/or SUA II prices by the consumer price increase ("CPI") increase amount exceeding five percent (5%). The All Urban Consumers- West Urban Consumer Price Index (Series ID CUUS0400SAO, All Items, Not seasonally adjusted with Base Period 1982-1984=100) shall be used as the measure of CPI for this price adjustment. The CPI percentage change calculation will take place once the annual average for each new year has been posted by the Bureau of Labor Statistics.

If funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, COUNTY shall immediately notify Motorola of such occurrence and this Contract will terminate on the last day of the fiscal year for which the appropriation was made without penalty or expense to COUNTY of any kind whatsoever. To the extent Motorola has delivered equipment or performed services prior to the last day of the fiscal year for which the appropriation was made, COUNTY shall be liable for payment for such equipment and services.

The Parties agree that the post warranty maintenance fees in Exhibit B are based upon the assumption that this Contract will be in effect for the full twenty (20) year term; and if the Contract is terminated before the end of the full twenty (20) year term, then the termination fees set forth below ("Termination Fee") are payable to enable Motorola to recoup a portion of the discounts that were applied to the annual fees based on an assumption that this Contract would be in effect for the full twenty (20) year term. The Termination Fee is not a penalty, but rather a charge to compensate Motorola for COUNTY's failure to satisfy the full term on which the contract price is based. The Termination Fee is calculated according to the following two (2) scenarios: 1) If COUNTY terminates the SUA II portion of the contract prior to the end of the twenty (20) year term then it will be responsible to pay Motorola the 10% Multi-year Discount and the Bundle Discount applied to the SUA II services for the years prior to the date of termination, not to exceed the aggregate of the discounts applied to the last three (3) years, and if a major upgrade has been delivered in the first year of the two year SUA II cycle, then COUNTY is responsible for full payment for the two-year SUA II cycle; and 2) If COUNTY terminates the NICE Audio Logging Equipment Service and/or the Land Mobile Radio Technical Support prior to the end of the twenty (20) year term, then COUNTY will be responsible to pay Motorola the Bundle Discount applied to the SUA II Final Price for the years prior to the date of termination, not to exceed the aggregate of the discounts applied to the last three (3) years and for future years, the Bundle Discount will not apply to the SUA II pricing. The 10% Multi-year Discount and the Bundle Discount are as set forth in Exhibit B under column headings identifying each discount.

**CHANGE: EXHIBIT B PRICE & PAYMENT TERMS**

Delete the Post Warranty Maintenance Service Options (page 4 of 6) in its entirety and replace with the Post Warranty Maintenance Services Pricing which is attached as Exhibit 1 to this Amendment.

Delete Section 11 of the Payment Terms section in its entirety and replace with the following:

11. Payment for Post Warranty Maintenance Services including SUA II services will be made annually in advance. Net thirty (30) days from invoice.

**CHANGE: EXHIBIT D TERMS AND CONDITIONS FOR MAINTENANCE**

Add the SUA II SOW, together with its Appendices, which is attached as Exhibit 2 to this Amendment.

Delete Section 10.1 of the Default/Termination section 10 and replace with the following:

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 (in total or in part) effective upon giving a written notice of termination to the defaulting party.

The effective date of this Amendment shall be December 16, 2014.

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All other provisions of the Contract, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

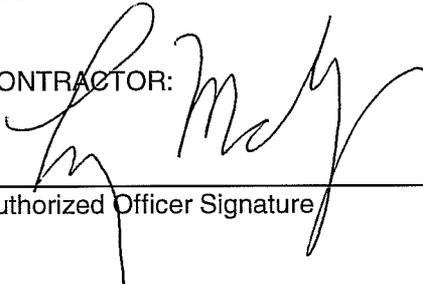
IN WITNESS THEREOF, the parties have affixed their signatures to this Amendment on the dates written below.

COUNTY:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

CONTRACTOR:

  
\_\_\_\_\_  
Authorized Officer Signature

Larry Mabry MSSSI Vice President & Director Sales  
Printed Name and Title

November 21, 2014  
Date

ATTEST

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney

**TOBIN ROSEN**

\_\_\_\_\_  
Print DCA Name

11/24/14  
Date

**EXHIBIT 1: PRICE AND PAYMENT TERMS**  
**TO CONTRACT AMENDMENT AM06**

**CONFIDENTIAL**

**(SUBJECT TO ARTICLE XXXI – PUBLIC INFORMATION PROVISION)**

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**EXHIBIT 2: SYSTEM UPGRADE AGREEMENT (SUA) II**  
**TO CONTRACT AMENDMENT AM06**

**CONFIDENTIAL**

**(SUBJECT TO ARTICLE XXXI – PUBLIC INFORMATION PROVISION)**

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