

CONTRACT ROUTING FORM

1. Complete the information below BEFORE printing and completing items 2 through 7. Items in red are required.

Department: Emergency Management

Department contract file name (use effective date): Motorola_EmergComms_20240709

Project Code: Click here to enter text.

Contract type: Contract

Contracted Services/Goods: BDA's for three schools

Contract Component: Master

Change Order Number/Addendum Number: Click here to enter text.

Vendor Name: Motorola Solutions

Effective Date: 07/09/2024

Approved by: Commissioners

Date approved by the BOC: 6/17/2024

Ending Date: Click here to enter a date.

Total Amount: \$205,343.35

Please Return Contract to:
Name: Mike Reitz
Email:
mike.reitz@chathamcountync.gov
Special Instructions for Clerks
Office:

2. Department Head or his/her designee has read the contract in its entirety.

By: _____ (Department Head signature required)

3. County Attorney has reviewed and approved the contract

County Attorney has reviewed and rejects the contract Reason: _____

This is an automatic renewal and does not require approval from the County Attorney: Yes No

If this box is checked the County Attorney's Office has reviewed the contract but has not made needed changes to protect the County because the contract is a sole source contract and the services required by the County are not available from another vendor.

4. Technical/MIS Advisor has reviewed the contract if applicable. Yes No

5. Vendor has signed the contract. Yes No

6. A budget amendment is necessary before approval. Yes No

If budget amendment is necessary, please attach to this form.

7. Approval

Requires approval by the BOC - contracts over \$100,000.00. Follow Board submission guidelines.

Requires approval by the Manager – contracts \$100,000 or less.

8. Submit to Clerk.

Clerk's Office Only

Finance Officer has signed the contract
 The Finance Officer is not required to sign the contract

**NORTH CAROLINA
CHATHAM COUNTY**

AGREEMENT FOR GOODS AND/OR SERVICES

THIS AGREEMENT FOR GOODS AND/OR SERVICES (this "Agreement"), made and entered into this _____ day of _____, 2024 by Chatham County, a corporate and body politic of the State of North Carolina (the "County") and Motorola Solutions (the "Contractor"). Either the County or the Contractor may be referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, the Contractor has agreed to provide goods and/or services as hereinafter set forth in a professional manner in accordance with the standards of Contractor's business or industry, and

WHEREAS, the County wishes to enter into an Agreement with Contractor to provide the goods and/or services specified in Appendix 1, Scope of Work, attached hereto and incorporated herein by reference and made an integral part of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual agreement described below, the Parties agree as follows:

1. **Term of Agreement:** 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 July 1 2024 and continues until the expiration of the Warranty Period or one (1) year from the Effective Date, whichever occurs last. "Warranty Period" means one (1) year from the date of shipment of the Equipment.
2. **Scope of Service:** The Contractor shall provide to the County the goods and/or service (the "Services") set forth in the "Scope of Work" attached hereto as Appendix 1.
3. **Compensation:** As compensation for the Services to be provided by the County, the County shall pay the Contractor the sum of \$205,343.35, payable within thirty (30) days from receipt of proper invoice and proper documentation that the goods/services have been delivered or provided in accordance with this Agreement or as otherwise set forth in Appendix 1. Contractor will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to the County upon shipment. Contractor will pack and ship all Equipment in accordance with good commercial practices.
4. **Insurance:** Contractor shall maintain insurance policies as shown in Appendix 2 for the entire term of this Agreement as well as any subsequent amendments.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and shall be rated not less than "A" by A.M. Best and Company. Contractors shall furnish Certificates of Insurance to the County, *including the County as an additional insured on the General Liability Policy*, prior to the commencement of Services. The certificates shall clearly indicate that Contractor has obtained insurance of the type, amount, and classifications as required for strict compliance with this paragraph and that no cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Compliance with the foregoing requirements shall not relieve Contractor from any liability or obligations under this Agreement.

The County requires all that all contractors carry workers' compensation insurance. The County recognizes that contractors with fewer than three employees are not statutorily required to carry said insurance. The County reserves the right to waive the requirement to carry workers' compensation insurance on a case-by-case basis. If the contractor's status changes during the term of an agreement and worker's compensation insurance becomes statutorily required, the contractor must provide proof of said coverage to the County.

5. **Confidentiality:** All proprietary data and information, if any, furnished each party shall be regarded as confidential, shall remain the sole property of the disclosing party and shall be held in confidence and safekeeping by the other party for the sole use of the County and Contractor under the terms of this Agreement. Both parties agrees that its officers, employees, and agents will not disclose to any person, firm, or entity other than the parties designated

legal counsel, accountants, or practice management consultants. Each party agrees to carry out its obligations in compliance with all privacy and security regulations required by law.

Contractor and the third-party manufacturer of any Equipment, own and retain all of their respective Proprietary Rights in the Equipment, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Contractor in connection with providing to the County the Equipment or related services remain vested exclusively in Contractor, and this Agreement does not grant to County any shared development rights of intellectual property. "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.

6. Intellectual Property Owned by Contractor: This Agreement is subject to the North Carolina public records law and may be released upon request. Not all "Trade Secrets" will qualify as protected under N.C.G.S. §132-1.2 and 66-152.
7. Status of Parties: Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between Contractor and the County. Contractor and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the County.
8. Assignment and Subcontracting: Neither this Agreement nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by either party without prior written consent of the other, such consent not to be unreasonably withheld.
9. Binding Effect: This Agreement shall be binding upon the Parties hereto, their heirs, administrators, executors, successors and assigns, if such assignment has been approved by the County.
10. Notices: Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, address as follows:

Chatham County
Attn: County Manager
Post Office Box 1809
Pittsboro, North Carolina 27312
919.542.8200

Motorola
Attn: Mark Perretti
315 Kitty Hawk Drive
Morrisville, North Carolina 27560
919.810.0667 / 919.786.0891
markperretti@callmc.com

11. Governing Law: This Agreement and the rights and obligations to the Parties hereunder shall be construed and governed by the laws of the State of North Carolina, and the venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.
12. Modifications: This Agreement may be amended or modified only by the mutual written consent of the Parties. A modification is not enforceable against the County unless it is signed by the County Manager or other duly authorized official.
13. Entire Agreement: This Agreement contains the entire agreement between the Parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral expressed or implied, between the Parties, other than as set forth or referenced in this Agreement.
14. Waiver: A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the Party against whom enforcement of the waiver is sought. The waiver of a breach of any provisions of this Agreement shall not operate or be construed as waiver of subsequent or other breach thereof.

15. Termination: This Agreement may be terminated as follows:

- a. Cause: If the services provided by Contractor under this Agreement are not performed as specified herein, this Agreement may be terminated by the County for cause. Grounds for termination for cause shall include, but not be limited to, the following:
 - i. Failure to respond to reasonable requests from the County to provide the Services covered by this Agreement.
 - ii. Failure to properly recycle any electronic equipment as specified in Article 9, Chapter 130A of the North Carolina General Statute, or failure to comply with any statutory requirement included in the formal bid request, as provided in the bid packet, which bid packet is incorporated herein by reference.
 - iii. Failure to maintain the insurance required by this Agreement.
 - iv. Charging rates or fees in excess of those permitted under this Agreement.
 - v. Inefficient, or unsafe practices in providing Services.
 - vi. The material breach of any provision of this Agreement.
- b. Convenience: The County reserves the right to terminate this Agreement upon thirty (30) days prior written notice to Contractor for any reason deemed by the County to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provision of this Agreement. In the event of such termination, the County shall pay the Contractor its costs directly attributable to those Services received by the County prior to termination that meet the requirements of this Agreement. Provided however, that no costs will be paid to the Contractor that are recoverable in the Contractor's normal course of doing business. The County is not liable for the loss of any profits anticipated to be made hereunder, nor for any special, consequential, or similar damage.

16. Annual Appropriations and Funding: This Agreement is subject to the annual appropriation of funds by the Chatham County Board of Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, the County shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment for all Services satisfactorily provided under this Agreement up to and through the Contractor's receipt of notice of termination. Notwithstanding the above, the County will pay Contractor for all conforming services rendered, and equipment or parts provided, up to the date of termination.

17. Indemnity and Limitation of Liability: GENERAL INDEMNITY BY Contractor. Contractor will indemnify and hold County harmless from any and all liability, expense, judgment, suit, or cause of action arising from any third party claim or demand for personal injury, death, or direct damage to tangible property which may accrue against County to the extent it is caused by the negligence of Contractor, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if County gives Contractor prompt, written notice of any third-party claim or suit. County will cooperate with Contractor in its defense or settlement of such claim or suit. This Section sets forth the full extent of Contractor's general indemnification of County from liabilities that are in any way related to Contractor's performance under this Agreement.

GENERAL INDEMNITY BY COUNTY. To the extent allowed by law, County will indemnify and hold Contractor harmless from any and all liability, expense, judgment, suit, or cause of action arising from any third party claim or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of County, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Contractor gives County prompt, written notice of any third-party claim or suit. Contractor will cooperate with County in its defense or settlement of such claim or suit. This action sets forth the full extent of County's general indemnification of Contractor from liabilities that are in any way related to County's performance under this Agreement.

PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

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

If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for County 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 (c) accept the return of the Motorola Product and grant County a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

Contractor 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 apparatus or device not furnished by Contractor; (b) the use of ancillary equipment not furnished by Contractor and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with County'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 Equipment by a party other than Contractor; or (e) use of Equipment in a manner for which the Equipment was not designed or that is inconsistent with the terms of this Agreement. In no event will Contractor's liability resulting from its indemnity obligation to County extend in any way to royalties payable on a per use basis or the County's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from County from sales of the infringing Equipment.

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

LIMITATION OF LIABILITY

Except for personal injury, death or damage to tangible property, Contractor'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 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 CONTRACTOR 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 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 one (1) year after the accrual of the cause of action, except for money due upon an open account.

18. **State and Federal Requirements:** By signing this Agreement, Contractor certifies that (*if applicable*) Contractor, and any of Contractor's subcontractor are in compliance with State and Federal laws, including any divestment list by the NC State Treasurer, and Federal or State debarment or suspension lists.
19. **Controlling Document:** In the event of any conflict between this Agreement and any document, instrument, or other agreement prepared or provided by Contractor (including, without limitation, Contractor's purchase orders, invoices and warranties), the terms of this Agreement shall control.
20. **Default and Termination:** 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 the default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If County is the defaulting Party, Contractor may stop work on the project until it approves the County's cure plan. If the non-performing Party fails to cure the default, the performing Party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement. In the event County elects to terminate this Agreement for any reason other than default, County shall pay Contractor for the conforming Equipment delivered and all services performed. "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, supplier performance, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause).

21. Sites and Site Conditions:

ACCESS TO SITES. If Contractor is providing installation or other services, County will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Contractor so that it may perform its contractual duties.

SITE CONDITIONS. If Contractor is providing installation or other services at County's sites, County will ensure that these work sites 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, County 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 Equipment.

22. **Acceptance:** Acceptance of the Equipment will occur upon delivery to Customer unless the statement of work provides for acceptance verification or testing, in which case acceptance of the Equipment will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Equipment for their operational purposes will constitute acceptance.

23. Representations and Warranties:

During the Warranty Period, Contractor warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within County's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

EXCLUSIONS TO EQUIPMENT WARRANTY. This warranty does not apply to: (i) defects or damage resulting from: use of the Equipment 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 Contractor; County'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.

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

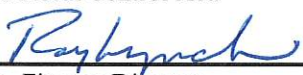
ORIGINAL END USER IS COVERED. These express limited warranties are extended by Contractor to the original user purchasing the Equipment for commercial, industrial, or governmental use only, and are not assignable or transferable.

DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT 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, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the Parties have executed this Agreement in their official capacities with legal authority to do so.

CHATHAM COUNTY

By: 
Dan LaMontagne, County Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Roy Lynch, Finance Director

CONTRACTOR

By: _____
Name: _____
Title: _____

APPENDIX 1

SCOPE OF WORK: Install one 700/800 MHz BDA/DAS at Chatham Central High School, Bonlee School and Margaret B. Pollard Middle School. This Agreement does not cover maintenance or support of the Equipment except as provided under the warranty. If County wishes to purchase maintenance, Contractor will provide a separate proposal and terms and conditions upon request.

PROJECT NAME: Chatham Central High School, Bonlee School, Margaret B. Pollard Middle School

SCOPE OF SERVICES: See attached quotes.

TOTAL COMPENSATION: \$205,343.35

COMPLETION DATE: July 1, 2025

APPENDIX 2

INSURANCE REQUIREMENTS

Worker's Compensation
Statutory Limits
general aggregate

Automobile Liability
\$250,000 Combined Single Limit

General Liability
\$ 1,000,000 per occurrence and \$2,000,000

Professional Liability
\$1,000,000 per claim and in the aggregate