



# **AVE MARIA STEWARDSHIP COMMUNITY DISTRICT**

## **COLLIER COUNTY REGULAR BOARD MEETING DECEMBER 3, 2024 9:00 A.M.**

[www.avemariastewardshipcd.org](http://www.avemariastewardshipcd.org)

### **DISTRICT MANAGER**

Special District Services, Inc.  
The Oaks Center  
2501A Burns Road  
Palm Beach Gardens, FL 33410

561.630.4922 Telephone  
877.SDS.4922 Toll Free  
561.630.4923 Facsimile

**AGENDA**  
**AVE MARIA STEWARDSHIP COMMUNITY DISTRICT**  
**REGULAR BOARD MEETING**

**December 3, 2024**

**9:00 a.m.**

**Ave Maria Master Association**  
**5080 Annunciation Circle, Suite 101**  
**Ave Maria, Florida 34142**

**TO JOIN VIA ZOOM: <https://us02web.zoom.us/j/84779450200>**

**MEETING ID: 847 7945 0200 DIAL IN AT: 1-929-436-2866**

- A. Call to Order
- B. Pledge of Allegiance
- C. Invocation
- D. Proof of Publication.....Page 1
- E. Seat New Board Members
- F. Administer Oaths of Office
- G. Review Board Members Responsibilities and Duties
- H. Establish a Quorum
- I. Consider Resolution No. 2024-21 – Canvassing and Certifying Results of the Landowners’ Election of Supervisors Held Pursuant to Section 190.006(2), Florida Statutes.....Page 2
- J. Consider Resolution No. 2024-22 – Redesignating Officers.....Page 4
- K. Additions or Deletions to Agenda
- L. Comments from the Public for District Items on the Agenda
- M. Approval of Minutes
  - 1. November 12, 2024 Regular Board Meeting Minutes.....Page 5
- N. Old Business
  - 1. AMSCD Projects Update.....Page 23
  - 2. Consider Approval of Funding Agreement between Lennar Homes, LLC and the District for Bond Reallocation.....Page 24
- O. New Business
  - 1. Consider Approval of Agreement Between Motorola Solutions, Inc. and the District to Improve Security Measures.....Page 33
  - 2. Consider Approval of Agreement between Collier County Sheriff’s Office and the District to Improve Security Measures.....Page 79
  - 3. Consider Approval of Contract Between Trebilcock Consulting Solutions and the District for a Traffic Study Update.....Page 85
- P. Administrative Matters
  - 1. Legal Report
  - 2. Engineer Report
  - 3. Manager’s Report
    - a. Financials.....Page 93
- Q. Final Public Comments

R. Board Members Comments

S. Adjourn

**\*Public Comment will be limited to three minutes (3:00) with no rebuttal**



Florida  
GANNETT

PO Box 631244 Cincinnati, OH 45263-1244

## **AFFIDAVIT OF PUBLICATION**

Laura Archer  
c/o Special District Services, Inc.  
Ave Maria Stewardship  
2501A Burns Road  
Palm Beach Gardens FL 33410

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the Naples Daily News, a newspaper published in Collier County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Collier and Lee Counties, Florida, or in a newspaper by print in the issues of, on:

11/25/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/25/2024

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$382.24

Tax Amount: \$0.00

Payment Cost: \$382.24

Order No: 10785598

# of Copies:

Customer No: 1125641

1

PO #: reg board meeting

**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

### **AVE MARIA STEWARDSHIP COMMUNITY DISTRICT NOTICE OF REGULAR BOARD MEETING**

The Board of Supervisors (the "Board") of the Ave Maria Stewardship Community District (the "District") will hold a Regular Board Meeting ("Meeting") at 9:00 a.m. on December 2, 2024, in the Ave Maria Master Association located at 5000 Annunciation Circle, Suite 101, Ave Maria, Florida 34142. The Meeting will also be available for viewing utilizing communications media technology ("Virtual Attendance") through the following login information, however public comment will only be available to those participating in person. The Zoom link below will allow for up to 1,000 individuals to view the meeting and all requests for public comment participation via Zoom must be submitted by 5 p.m. December 2, 2024. In advance of the meeting to the District Manager, Allyson Holland, at [aholland@dsinc.org](mailto:aholland@dsinc.org) with the agenda item they wish to speak on noted. Virtual Attendance is offered for convenience only and in the event there are interruptions in internet service or other technical difficulties the Meeting will continue at the physical location regardless of availability of the Virtual Attendance option.

Join by URL for VIDEO ACCESS at:

<https://us02web.zoom.us/j/84779450200>

Meeting ID: 847 7945 0200

Join by PHONE at: 1-929-436-2866

Meeting ID: 847 7945 0200

The purpose of the Meeting is for the Board to address District related items as noted on the Agenda. At such time, the Board is so authorized and may consider any business that may properly come before it.

A copy of the agenda may be obtained at the offices of the District Manager, Special District Services, Inc., 2501A Burns Road, Palm Beach Gardens, Florida 33410 (561) 430-4922, during normal business hours, or by visiting the District's website at [www.ave mariastewardshipdpc.org](http://www.ave mariastewardshipdpc.org) seven (7) days prior to the meeting date.

The meeting is open to the public and will be conducted in accordance with the provisions of Florida law. The meeting may be continued to a date, time and place to be specified on the record of the meeting. There may be occasions when Board Supervisors or District Staff may participate by speaker telephone or other communications media technology.

Any person requiring special accommodations at this meeting because of a disability or physical impairment should contact the District Manager's Office at least forty-eight (48) hours prior to the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service by dialing 711, or 1-800-955-8771 (TTY)/1-800-955-8770 (Voice), for aid in contacting the District Manager's office.

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advising that person will need a record of proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

**AVE MARIA STEWARDSHIP  
COMMUNITY DISTRICT**  
[www.ave mariastewardshipdpc.org](http://www.ave mariastewardshipdpc.org)  
No. 10785598 Nov. 25, 2024

VICKY FELTY  
Notary Public  
State of Wisconsin

## RESOLUTION 2024-21

### A RESOLUTION OF THE BOARD OF SUPERVISORS OF AVE MARIA STEWARDSHIP COMMUNITY DISTRICT CANVASSING AND CERTIFYING THE RESULTS OF THE LANDOWNERS ELECTION OF SUPERVISORS HELD PURSUANT TO CHAPTER 2004-461, LAWS OF FLORIDA, AND PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, the Ave Maria Stewardship Community District ("District") is a local unit of special-purpose government created and existing pursuant to Chapter 2004-461, Laws of Florida, (the "Act") being situated entirely within Collier County, Florida; and

**WHEREAS**, pursuant to the Act, a landowners meeting is required to be held within 90 days of the District's creation and every two years following the creation of the District for the purpose of electing supervisors of the District until such time as the Board of Supervisors can be elected by qualified electors of the District; and

**WHEREAS**, such landowners meeting was held on November 12, 2024, and at which the below recited persons were duly elected by virtue of the votes cast in his/her favor; and

**WHEREAS**, the Board of Supervisors of the District, by means of this Resolution, desire to canvas the votes and declare and certify the results of said election.

### NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF AVE MARIA STEWARDSHIP COMMUNITY DISTRICT:

**SECTION 1.** The following individuals are found, certified, and declared to have been duly elected as Supervisor of and for the District, having been elected by the votes cast in their favor as shown:

<u>Nick Casalanguida</u>	Seat 1	Votes <u>7,631</u>
--------------------------	--------	--------------------

<u>Naomi Robertson</u>	Seat 2	Votes <u>7,631</u>
------------------------	--------	--------------------

**SECTION 2.** In accordance with the Act and by virtue of the number of votes cast for the Supervisor, the above-named individuals are declared to have been elected for the following term of office:

<u>Nick Casalanguida</u>	4-year term
--------------------------	-------------

<u>Naomi Robertson</u>	4-year term
------------------------	-------------

**SECTION 3.** This resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** this 3<sup>rd</sup> day of December 2024.

ATTEST:

**AVE MARIA STEWARDSHIP COMMUNITY  
DISTRICT**

---

Secretary / Assistant Secretary

---

Chairperson, Board of Supervisors

**RESOLUTION 2024-22**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF AVE MARIA STEWARDSHIP COMMUNITY DISTRICT REDESIGNATING CERTAIN OFFICERS OF THE DISTRICT, AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Ave Maria Stewardship Community District (hereinafter the “District”) is a local unit of special-purpose government created and existing pursuant to Chapter 2004-461, Laws of Florida, being situated entirely within Collier County, Florida; and

**WHEREAS**, the Board of Supervisors of the District desires to re-designate certain Officers of the District following the landowner elections of new supervisors.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF AVE MARIA STEWARDSHIP COMMUNITY DISTRICT:**

**SECTION 1.** \_\_\_\_\_ is appointed Chairman.

**SECTION 2.** \_\_\_\_\_ is appointed Vice Chairman.

**SECTION 3.** \_\_\_\_\_ is appointed Assistant Secretary.

\_\_\_\_\_ is appointed Assistant Secretary.

\_\_\_\_\_ is appointed Assistant Secretary.

\_\_\_\_\_ is appointed Assistant Secretary.

\_\_\_\_\_ is appointed Assistant Secretary.

**SECTION 4.** This Resolution supersedes any prior appointments made by the Board for Chairman and Vice-Chairman and Assistant Secretaries; however, prior appointments by the Board for Secretary, Treasurer and Assistant Treasurer(s) remain unaffected by this Resolution.

**SECTION 5.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** this 3<sup>rd</sup> day of December 2024.

**ATTEST:**

**AVE MARIA STEWARDSHIP COMMUNITY DISTRICT**

\_\_\_\_\_  
Secretary / Assistant Secretary

\_\_\_\_\_  
Chairperson, Board of Supervisors

**MEETING MINUTES  
AVE MARIA STEWARDSHIP COMMUNITY DISTRICT  
REGULAR BOARD MEETING**

**November 12, 2024**

**6:00 p.m.**

**Grand Hall at Del Webb**

**6008 Del Webb Way**

**Ave Maria, Florida 34142**

**TO JOIN VIA ZOOM: <https://us02web.zoom.us/j/84779450200>**

**MEETING ID: 847 7945 0200 DIAL IN AT: 1-929-436-2866**

**A. Call to Order**

The November 12, 2024 Regular Board Meeting of the Ave Maria Stewardship Community District (the “District”) was called to order at 6:00 p.m. at Grand Hall at Del Webb, located at 6008 Del Webb Way, Ave Maria, FL 34142. The meeting was also available via Zoom information indicated above.

**B. Pledge of Allegiance**

**C. Invocation**

Supervisor Klucik led the meeting in prayer.

**D. Proof of Publication**

Proof of publication was presented indicating that notice of the Regular Board Meeting and Landowners’ Meeting had been published in the Naples Daily News on October 16 and October 23, 2024, as legally required.

**E. Establish a Quorum**

A quorum was established with the following:

**Board of Supervisors**

Chairman	Thomas Peek	Present
Vice Chair	Jay Roth	Present
Supervisor	Jeff Sonalia	Present
Supervisor	Tom DiFlorio	Present
Supervisor	Robb Klucik	Present

District Staff in attendance were:

District Manager	Todd Wodraska	Special District Services, Inc.
District Manager	Allyson Holland	Special District Services, Inc.
General Counsel	Alyssa Willson	Kutak Rock, LLP
District Engineer	Ted Tryka	LJA Engineering, Inc.
Owner Representative	David Genson	Barron Collier Companies

Also present were the following:

Donny Diaz, Tim Schlieff, Nick Casalanguida, David Hurst, Jaclyn Canerdy, Chris Hasty, and approximately 40 members of the public. There were also approximately 10 present via Zoom.

**F. Additions or Deletions to Agenda**



There were no additions or deletions to the agenda.

#### **G. Comments from the Public for District Items on the Agenda**

Bea Sanford – Not pleased with Davey Tree’s maintenance of District property, specifically with respect to the weeds and palm bark. Ms. Sanford suggested that there are other vendors that the District could consider.

#### **H. Approval of Minutes**

##### **1. September 10, 2024 Regular Board Meeting & Public Hearing Minutes**

The minutes of the September 10, 2024 Regular Board Meeting and Public Hearing were presented for consideration. A **motion** was made by Mr. DiFlorio, seconded by Mr. Roth and passed unanimously approving the minutes of the September 10, 2024 Regular Board Meeting & Public Hearing.

#### **I. Old Business**

##### **1. AMSCD Projects Update**

Ms. Holland gave a brief update on District projects in accordance with the updated project list. Ms. Holland acknowledged that there are two project update spreadsheets in the meeting book. The first one is from last month, the second one is updated for this meeting. She stated that the Anthem Parkway Phase 5B project needs to be corrected; the permits will be submitted later this year, they were not submitted in October. Mr. Tryka gave a brief update on the Oil Well Berm and Owens roundabout projects.

Mr. Genson provided an update on development items related to the Ave Maria community to the Board. He explained that today, the Collier County BOCC recommended approval of a large-scale amendment to the Growth Management Plan (GMP) to transmit the amendment to the State for review and approval (large-scale amendments require state approval). Collier County expects to hear back from the State within 30 days. If approved by the State, then the amendment will go back before the BOCC for adoption. The GMP amendment includes removing the maximum size for towns (currently 6,000 ac). The amendment also clarifies that the definition for goods & services also include manufacturing and employment centers (not just retail and services). Note that this amendment is for towns in general, not Ave Maria specifically.

If the amendment is adopted, Ave Maria Development will seek to increase the SRA by approximately 2,000 acres. The map of the expansion was shown on the screen for the public to view, but it was not visible to the Board of Supervisors. A copy of the map is attached hereto. Mr. Klucik asked if the County approved the SRA expansion for Ave Maria and Mr. Genson confirmed that no, the approval does not include any expansion in Ave Maria at this time.

#### **J. New Business**

##### **1. Consider Resolution. No. 2024-17 – Expressing Recognition and Appreciation for Manuel Milanes-Pizonero**

Ms. Holland read Resolution No. 2024-17 – Expressing Recognition and Appreciation for Manuel Milanes-Pizonero. A **motion** was made by Mr. Klucik to approve Resolution No. 2024-17 – Expressing Recognition and Appreciation for Manuel Milanes-Pizonero, seconded by Mr. DeFlorio and passed unanimously approving Resolution No. 2024-17 – Expressing Recognition and Appreciation for Manuel Milanes-Pizonero. Mr. Milanes-Pizonero and his family came to the front of the room for photos with the Board of Supervisors.

**2. Consider Resolution. No. 2024-18 – Expressing Recognition and Appreciation for Jans Antela Almaral, Othmaro Crespin, Leonardo Maldonado and George Shepard**

Mr. Tim Schlieff presented this item on behalf of Ave Maria Utility Company (AMUC). Mr. Schlieff explained the heroic actions taken by his staff, and then read Resolution No. 2024-18 – Expressing Recognition and Appreciation for Jans Antela Almaral, Othmaro Crespin, Leonardo Maldonado and George Shepard. A **motion** was made by Mr. Klucik to approve Resolution No. 2024-18 – Expressing Recognition and Appreciation for Jans Antela Almaral, Othmaro Crespin, Leonardo Maldonado and George Shepard, seconded by Mr. DeFlorio and passed unanimously approving Resolution No. 2024-18 – Expressing Recognition and Appreciation for Jans Antela Almaral, Othmaro Crespin, Leonardo Maldonado and George Shepard. Jans Antela Almaral, Othmaro Crespin, Leonardo Maldonado and George Shepard and some of their families came to the front of the room for photos with the Board of Supervisors.

**3. Consider Authorizing District Staff to Engage and Analyze Lennar Homes, LLC’s Request for the Reallocation of Bond Proceeds at The National Golf & Country Club at Ave Maria.**

Ms. Willson presented a brief overview of this item and then introduced Mr. Chris Hasty, representing Lennar Homes to discuss this item. Mr. Hasty stated that The National residents felt like they had a hard gate, but District residents think it’s open to the public. Mr. Hasty explained that Lennar is requesting that the original scope of the project be revised and that the District reallocate bond proceeds accordingly due to higher construction costs than contemplated in the original engineering and methodology reports. Should the Board approve moving forward, this would authorize staff engagement and analysis to review the submitted documents. Upon review, it is anticipated additional follow up items may include updates to reports and setting and noticing public hearings which would result in a process that includes multiple Board meetings. Mr. Klucik stated that residents have the right to access The National and that it’s not about feelings. Mr. Klucik said that Lennar had this problem with another community that was recently resolved. Mr. Klucik stated that when bonds were issued, it was a public road, some residents are still being harassed, and that he wants an apology from Lennar. He believes Lennar has insulted everyone for years and they ignored the problem. Mr. Hasty apologized to the Board on behalf of Lennar and stated that he is here to solve the problem. Mr. Klucik said that Lennar has a legal problem. Mr. Peek stated that he is in favor of entertaining a motion to approve this item.

A **motion** was made by Mr. DiFlorio to authorize District staff to engage and analyze Lennar Homes, LLC’s request for the reallocation of bond proceeds at The National Golf & Country Club at Ave Maria, seconded by Mr. Sonalia and passed unanimously authorizing District staff to engage and analyze Lennar Homes, LLC’s request for the reallocation of bond proceeds at The National Golf & Country Club at Ave Maria.

**4. Consider Resolution No. 2024-19 – Adopting a Fiscal Year 2023/2024 Amended Budget**

The Fiscal Year 2023/2024 Amended Budget was presented by Mr. Wodraska. Mr. Wodraska explained that this is a “look-back budget”. He highlighted the overages in the Administration and Maintenance expenditures and explained that the overages would be absorbed by the developer contribution. Mr. Klucik had questions regarding the changes to the developer contribution assessment for debt. Ms. Willson and Mr. Wodraska advised the changes related to timing of the platting of lots and whether included in the on-roll assessments or off-roll developer payment. Mr. Wodraska explained that additional funds were included in the amended budget in the event that late invoices that are submitted to the District. It was pointed out that the incorrect FY is referenced on page 57 and Mr. Wodraska stated that this will be corrected. Mr. Klucik asked if the overages will be paid back to the developer through bonds. Mr. Wodraska confirmed that that none of the operation and maintenance budget overages will be paid back by bonds. Mr. Klucik recognized the developer for his contribution and thanked Ave Maria Development.

A **motion** was made by Mr. Sonalia to approve Resolution No. 2024-19 – Adopting a Fiscal Year 2023/2024 Amended Budget, seconded by Mr. DiFlorio and passed unanimously approving Resolution No. 2024-19 – Adopting a Fiscal Year 2023/2024 Amended Budget.

**5. Consider Resolution No. 2024-20 – Adopting a Fiscal Year 2023/2024 Amended Budget for the Master Irrigation Utility System**

The Fiscal Year 2023/2024 Amended Budget for the Master Irrigation Utility System was presented by Mr. Wodraska. Mr. Wodraska explained that irrigation utility system budget tracked closer to the adopted budget. No questions were asked. A **motion** was made by Mr. Sonalia to approve Resolution No. 2024-20 – Adopting a Fiscal Year 2023/2024 Amended Budget for the Master Irrigation Utility System, seconded by Mr. DiFlorio and passed unanimously approving Resolution No. 2024-20 – Adopting a Fiscal Year 2023/2024 Amended Budget for the Master Irrigation Utility System.

**6. Consider Approval of Contract Amendment with Davey Tree Expert Company for Landscape and Irrigation Maintenance Services on the Ave Maria Boulevard Extension.**

Ms. Holland presented this item. She explained that a portion of Ave Maria Boulevard was recently extended to the north as part of the Anthem Parkway Phase 5A project. The District is responsible for landscape and irrigation maintenance of this area as this is District property and the aforementioned roadway extension is not a part of the existing Davey Tree contract. Davey Tree provided an annual cost of \$32,681.00 to provide service to this area. This cost is consistent with the existing contract for the required services on the Ave Maria Boulevard extension. The first annual renewal cost of \$729,793.00 for the Davey Tree contract was included in the adopted FY 2024-2025 Operations & Maintenance Budget and the Developer agreed to fund the \$31,829.00 amendment for Massa Way. The Developer has agreed to fund the \$32,681.00 amendment for the Ave Maria Boulevard extension for the remainder of the FY. If approved, the total amended contract price to Davey Tree will be \$794,303.00. Ms. Holland acknowledged that District staff has been working with Davey Tree to improve their service. She stated that staff is not happy with all of the weeds and landscape maintenance in certain areas of the District. Mr. Klucik stated that he was pleased Ms. Holland addressed the public comment earlier today. A **motion** was made by Mr. DiFlorio to approve the Contract Amendment with Davey Tree Expert Company for Landscape and Irrigation Maintenance Services on the Ave Maria Boulevard Extension, seconded by Mr. Sonalia and passed unanimously approving the Contract Amendment with Davey Tree Expert Company for Landscape and Irrigation Maintenance Services on the Ave Maria Boulevard Extension.

**7. Receive Presentation from England, Thims & Miller, Inc. Regarding Asset Management Software and Programing for the District.**

Ms. Holland gave a brief introduction and explained that the District has been working with England, Thims, & Miller, Inc. (ETM) to provide GIS and Asset Management Consulting Services for over a year. ETM provides system optimization, data management, training & support, operational process review, and system administration. Over the past year, we have had onsite sessions to gather information and provide onsite training. ETM developed asset management software that District employees have been using to track repairs and maintenance. Ms. Holland introduced Mr. Daniel Johns from ETM to present the asset management software and the benefits to the District. Mr. Johns presented a powerpoint presentation included herein. Mr. Klucik commented that this has been beneficial for reserves and a good expenditure. He questioned the \$115,000 proposal for the District and asked what AMUC's proposal cost is. Mr. Johns stated that AMUC's contract is roughly the same.

**8. Consider Approval of Contract between England, Thims & Miller, Inc. & the District to Continue to Provide Asset Management Software, Programing, and Support Services for the District.**

Ms. Holland presented this item. The District, in coordination with AMUC, has been working with ETM to provide GIS and Asset Management Consulting Services for over a year. ETM provides system optimization, data management, training & support, operational process review, and system administration. Over the past year, we have had onsite sessions to gather information and provide onsite training. ETM developed asset management software that District employees have been using to track repairs and maintenance. The District's Goals, Objectives, and Performance Measures/Standards include Asset Management Software Integration as Goal 2.2 which includes completing the asset management integration and completing the onboarding process for at least one contractor. District staff requests the Board's approval of the contract with ETM to continue to provide ongoing consulting services to support GIS and Asset Management needs. The District budgeted \$125,000 in the adopted FY 2024/2025 budget to operate and maintain the asset management software and licensing. Funding ETM's contract in the amount of \$115,000 is within the O&M budget for this service. Please note that the District's software and licensing fees in the amount of \$10,000 annually is a shared cost with AMUC. This item also includes a Memorandum of Understanding between the District and AMUC to accompany the contract as the Esri ArcGIS Online and Cartegraph software includes assets for both the District and AMUC. Mr. Roth asked if the contract terms and conditions can include cybersecurity protection and staff responded yes could request addition to the agreement, the contract is in substantial form as we received comments from the client and we are working through those items. Ms. Willson clarified the coordination and cost share portion of the asset management software with AMUC.

A **motion** was made by Mr. Roth to approve the Contract in substantial form between England, Thims & Miller, Inc. & the District to Continue to Provide Asset Management Software, Programing, and Support Services for the District and the Memorandum of Understanding between the District and AMUC, seconded by Mr. DiFlorio and passed unanimously approving the Contract in substantial form between England, Thims & Miller, Inc. & the District to Continue to Provide Asset Management Software, Programing, and Support Services for the District and the Memorandum of Understanding between the District and AMUC.

**9. Board Update on Developer Engagement of a PR Firm to Assist with District Communication.**

Ms. Holland presented this item. She explained that the District's Goals, Objectives, and Performance Measures/Standards include improving communication as Goal 1.2. For many years, the Board and residents have asked for better communication from the District. In an effort to begin improving communication, staff contacted a local public relations firm to discuss the needs of the District. GSMA is a full-service public relations and marketing agency that has served Southwest Florida for over 40 years. Their firm has extensive experience in and a successful record of developing results-oriented public relations and marketing programs for local, regional and national organizations. Although the District did not budget for public relations services this year, Ave Maria Development contracted with GSMA to provide their services for the District. GSMA understands that the District is seeking strategic communications services to develop messaging to inform and educate residents and community members. It is essential to clearly communicate the role and impact the District has in the community and provide a comprehensive understanding of the District to its stakeholders. Mr. Klucik stated that he believes this is healthy skepticism and it stinks. He believes this is the exact opposite of the District's goals. He stated that this agreement results in the Board having no control over public relations. He believes that this gives the impression that GSMA will be speaking on behalf of the Board, but the Board has no say. Ms. Willson inquired as to activities the Board would be comfortable with District collaborating with GSMA. Mr. Roth stated that he believes the PR firm with help with communication, not necessarily speak on behalf of the Board.

A **motion** was made by Mr. Klucik asking District staff to advise GSMA that they cannot make statements on behalf of the District, seconded by Mr. DiFlorio and passed unanimously asking District staff to advise GSMA that they cannot make statements on behalf of the District.

**10. Consider Approval of Contract between the District and Stantec Consulting Services, Inc. for Evaluating Alternative Irrigation Rate Structures for the Master Irrigation Utility.**

Ms. Holland presented this item starting with background information on the Master Irrigation Utility, which is owned by the District and maintained through the AMUC. Irrigation rates were initially established in 2007 and the Board has approved rate increases several times in the past. Irrigation rates consist of a base charge and a tiered consumption charge based on usage. The Master Irrigation Utility operates as an enterprise fund; an organization that provides goods or services to Ave Maria for a fee that makes the entity self-supporting. The goal of the Master Irrigation Utility budget is to achieve revenue neutrality. FY 2023/2024's anticipated loss is approximately \$370,000 against \$1.41M in revenue; the developer has funded any deficit in the past. Ms. Holland explained that a base charge is a user fee that funds the total cost of operations, maintenance, and non-growth related capital improvements. The base charge for most utilities or municipalities varies based on the meter size. AMUC has upheld a universal base charge, regardless of meter size, since inception. This has likely negatively affected the budget over time, and is one of the factors driving the need for the rate structure evaluation. Ms. Holland referenced Collier County Public Utilities rates for comparison.

Stantec will provide support services to the District related to evaluating alternative irrigation rate structures. Regular rate adjustments are necessary to ensure the rates generate the right amount of revenue and cash flow to provide reliable and sustainable services. Rates must keep up with the increasing costs of operations, including increases in the costs of electricity, raw materials like fuel and chemicals, insurance and labor, and changing regulatory requirements. Ultimately, the District Board of Supervisors must approve any changes in Master Utility rates in accordance with the requirements of Chapter 2004-461, Laws of Florida. Through continued diligent cost containment efforts and measured risk approach to scheduling capital improvement projects, the District is positioned to provide its very high level of service. It is our intention to review irrigation rates regularly moving forward. Services for evaluating alternative rate structures for the master irrigation utility is not included in the adopted FY 2024-2025 Master Utility Irrigation Utility Budget. The Developer agreed to fund the contract cost in the amount of \$47,750.00. Mr. Klucik acknowledged that AMD has funded the deficit in the past, but asked when it would be neutral. Mr. Genson stated that it would never be neutral if the rates remain as they currently stand. He explained that the base rates need to be adjusted as they are currently unfair. Mr. Klucik asked if a huge rate increase was coming down the pipeline. Staff responded that this rate evaluation will help us determine that. Mr. Sonalia asked if it's normal to charge one base fee for all meter sizes and staff responded no, base rates typically increase as meter size increases.

A **motion** was made by Mr. DiFlorio to approve the Contract between the District and Stantec Consulting Services, Inc. for Evaluating Alternative Irrigation Rate Structures for the Master Irrigation Utility, seconded by Mr. Roth and passed unanimously approving the Contract between the District and Stantec Consulting Services, Inc. for Evaluating Alternative Irrigation Rate Structures for the Master Irrigation Utility.

**11. Consider Approval of Change Order No. 2 to O'Donnell Landscapes for Median Improvements and Approval of Construction Funding Agreement.**

Ms. Holland presented this item and explained that In April 2024, the District contracted O'Donnell for landscape and irrigation services in conjunction with the Anthem Parkway Phase 5A project for an original contract price of \$868,655.85. On August 6, 2024, the Board approved CO #1 in the

amount of \$64,100.00 for the installation of pine trees that were omitted from the material summary tabulation in the landscape plans and for adding larger irrigation clocks to support future roadway expansion. O'Donnell's contract price incorporating CO #1 is \$932,755.85. The construction plans include eliminating the left turn lane into North Park on Anthem Parkway, just east of the intersection at Ave Maria Boulevard, resulting in a larger landscape median. Unfortunately, the landscape plans did not include a planting plan for the median expansion. After discussing the oversight with the landscape architect, District staff recommended replacing the majority of the plantings in the median to maintain consistency with the remainder of proposed Anthem Parkway Phase 5A. The existing live oak and sabal palms will remain, but all understory will be removed and replaced as well as irrigation repairs. This CO also includes sod and irrigation repair associated with the construction of the shared use path which will replace the existing sidewalk. The total amount for CO #2 is \$35,950.00. District staff supports this change order as this median is overgrown and is in need of rehabilitation. The new total contract price for O'Donnell, including CO #2 is calculated as follows:  $\$932,755.85 + \$35,950.00 = \$968,705.85$ . Mr. Klucik asked if the developer will fund initially, but will be reimbursed later. Ms. Willson explained that the developer has agreed to fund the CO, which may be reimbursed by future bond issuance, included in the proposed construction funding agreement.

A **motion** was made by Mr. DiFlorio to approve Change Order No. 2 to O'Donnell Landscapes for Median Improvements and Approval of Construction Funding Agreement, seconded by Mr. Sonalia and passed unanimously approving Change Order No. 2 to O'Donnell Landscapes for Median Improvements and Approval of Construction Funding Agreement.

## **12. Discussion Regarding Flooding During Rain Events on Ave Maria Boulevard.**

Ms. Holland presented this item and explained that Mr. Klucik asked that it be brought to the Board for discussion. The portion of Ave Maria Boulevard between Assisi Avenue and Milano Street has experienced localized flooding during rain events for many years. Out of an abundance of caution, the Master Association has sent email blasts warning residents of the localized flooding and provided an alternative route for vehicles. Ms. Holland has recently received multiple emails questioning the reason for the flooding and asking when this issue will be resolved. The localized flooding is caused by sheet flow runoff from the Ave Maria University (AMU) vacant land west of this section of Ave Maria Boulevard. The vacant AMU land was filled many years ago, but the land was not developed. The AMU vacant lot is not part of the Ave Maria Boulevard drainage basin, and runoff should be contained onsite. The drainage system on Ave Maria Boulevard was not designed to handle the sheet flow from the AMU property. As a result, the Ave Maria Boulevard drainage system surcharges, exceeding the stormwater pipes capacity, causing the surface water to back up, resulting in localized flooding. It should be noted that the surface water recedes after the rain event. Ave Maria Development (AMD) has discussed this issue and a proposed plan to remedy the flooding with AMU. District staff will continue to follow up with AMD and AMU to ensure that the issue is resolved before next rainy season.

## **13. Consider Authorization to Submit for Change in District Street Name.**

Ms. Genson presented this item. Mr. Genson thanked Mr. Peek for his twenty years of service to the Board and he recognized Mr. Peek for his commitment to the District. Mr. Genson requested the Board's approval to submit for a change in District street name to Collier County to change the current street name Massa Way to Peek Way in honor of Mr. Peek. The Board and audience applauded Mr. Peek for his dedication to the Board. Each Board member shared memories or extended thanks and gratitude for Mr. Peek. A **motion** was made by Mr. Klucik to authorize the District to Submit for Change in Street Name from Massa Way to Peek Way, seconded by Mr. Roth and passed unanimously authorizing the District to Submit for Change in Street Name from Massa Way to Peek Way.

**K. Administrative Matters**

**1. Legal Report**

Ms. Willson had nothing further to report.

**2. Engineer Report**

Mr. Tryka had nothing further to report

**3. Manager's Report**

Ms. Holland had nothing further to report.

**a. Financials**

Mr. Wodraska indicated that the financials were included in the meeting book.

**L. Final Public Comments**

No public comments.

**M. Board Members Comments**

Mr. Klucik offered additional comments regarding Item J.3. He stated that Lennar Homes has been in this situation before on a project in Tampa called Heritage Isles.

**N. Adjourn**

There being no further business to come before the Board, the Regular Board Meeting was adjourned at 8:17 p.m. by Chairman Peek. There were no objections.

---

**Secretary/Assistant Secretary**

---

**Chair/Vice-Chairman**





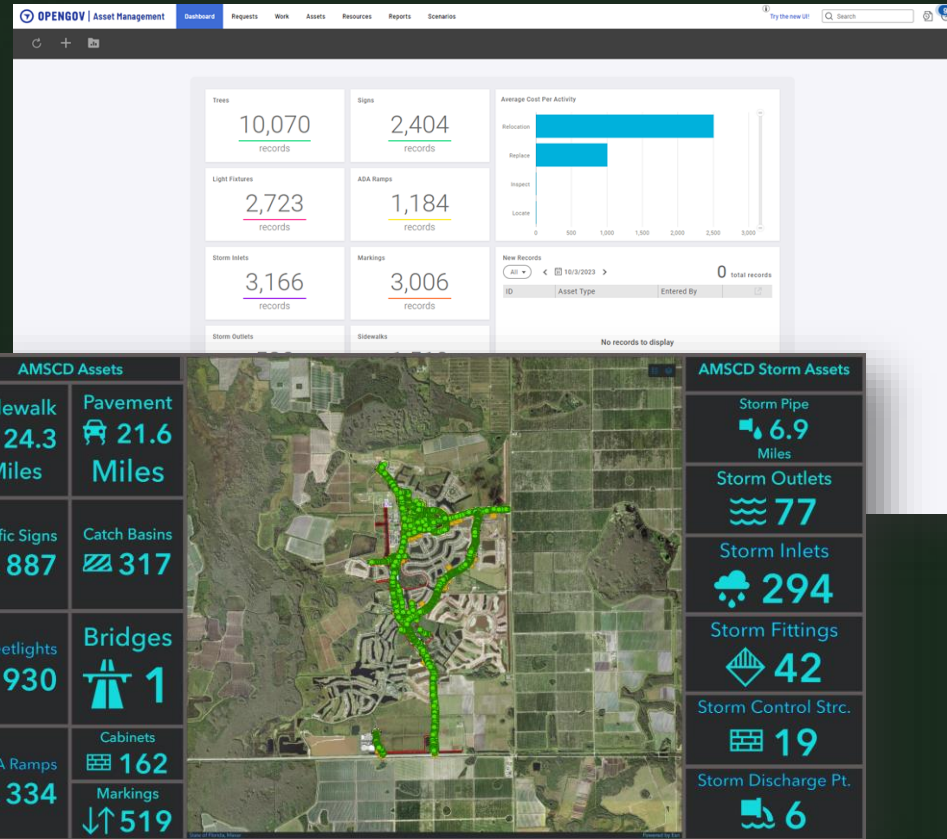


# Ave Maria Stewardship Community District

## *Asset Management + GIS*

# Agenda

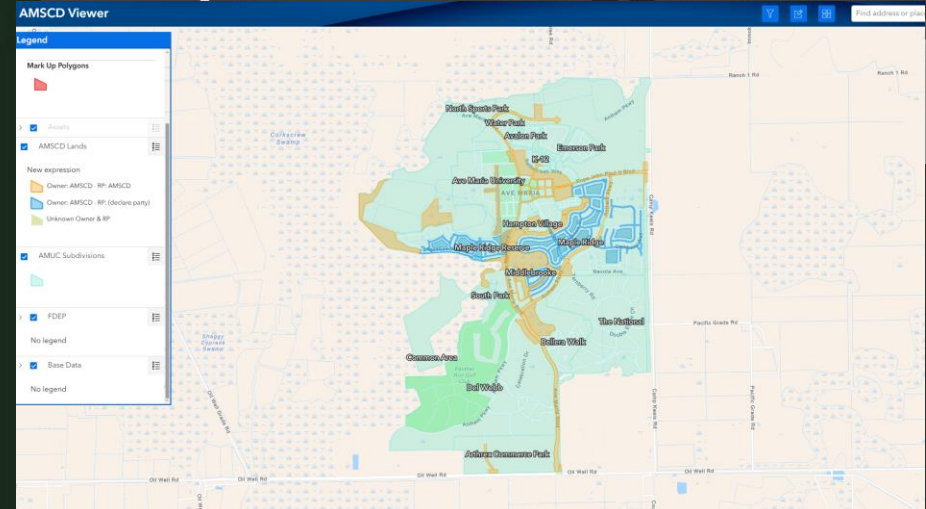
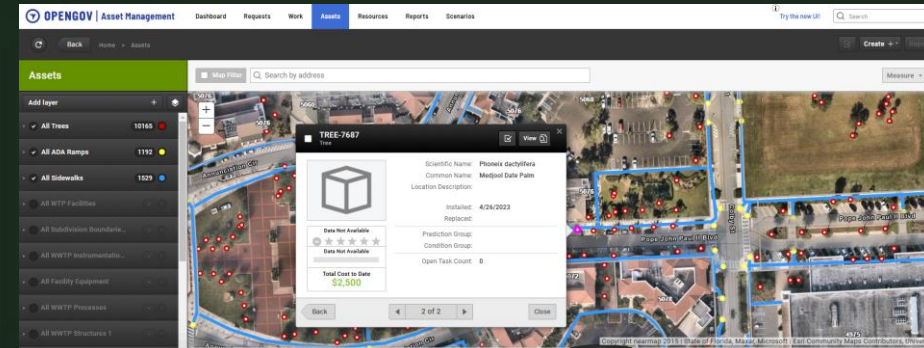
- Project Background
- Asset and Work Management
- Reporting and Visualization
- Staff Engagement & Training



*Pictured: Dashboard & custom viewer*

# Project Background

- Project and partnership started in 2023
- Integrated assets into Cartegraph Asset Management
- Worked closely with AMSCD & AMUC to build out workflows for managing assets





# Asset & Work Management

## The 'Whys'

- Work & asset tracking
- Preventative maintenance plans
- Automated notifications
- Cost & condition assessments

OPENGOV | Asset Management

DashboardWorkAssetsResourcesReportsScenarios

Try this new UI

Search

1

BackHomeWorkTask 24724

CreateReportsActions

Task ID24724

ActivityAccident Repair

AssetSign SIGN-0306

View

PriorityHigh

StatusCompleted

Start Date10/24/2024

Stop Date10/24/2024

Completed Task

Enter Resources

Total Cost

Productivity

Labor

Equipment

Material

Other

\$1,560

Cost per Unit\$0.00

Labor Hours0

Labor Cost\$0

Equipment Cost\$0

Material Cost\$0

Other Cost\$1,560

Map

Location

Task Setup

Task Details

Attached Files

Task Details

Status: Completed

Estimated Start Date: 1/29/2024

Estimated Stop Date: 1/29/2024

Actual Start Date: 10/24/2024

Actual Stop Date: 10/24/2024



Pictured: Damaged sign & repair

# 2024

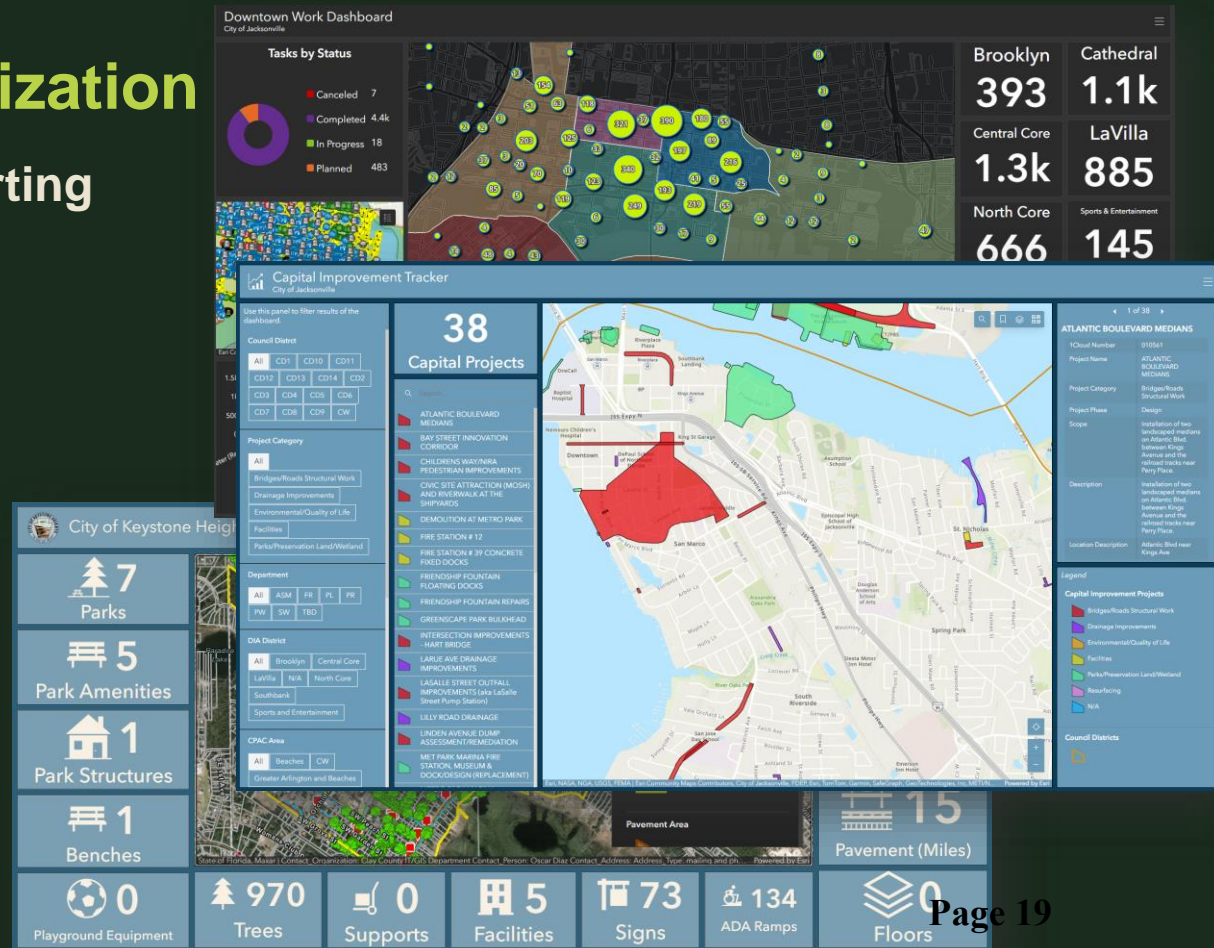
## Software View

**ETM** ENGLAND-THIMS & MILLER

# Reporting & Visualization

## Esri Dashboards & Reporting

- Work reporting for citizens and leadership
- Asset counts with an interactive map
- Interactive CIP with the ability to easily filter (e.g., striping improvements, pavement condition, etc.)





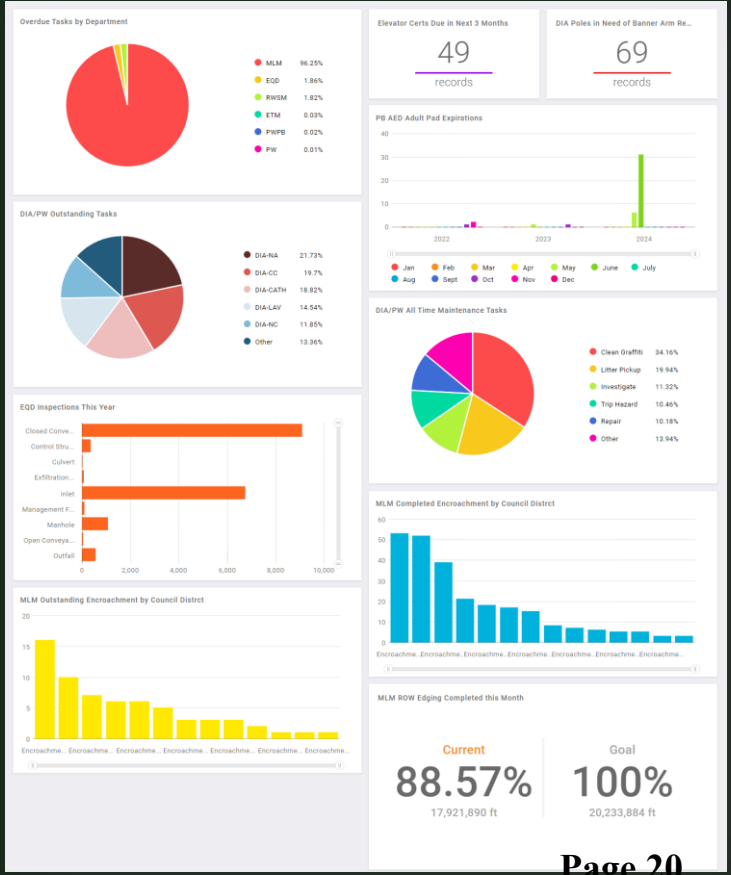
# Asset and Work Reporting

## Dashboards and Reports

- Track assigned work
- New or overdue work
- Customizable to user
- Advanced reporting
- Exception management

J and D Maintenance and Services														ETM	
City 21 Cycle Right of Way Mowing from 7/1/2024 to 7/30/2024															
Due Date	Completion Date	Street Name	Street From	Street To	Mowing Length (ft)	Mowing Width (ft)	Mowing Area (sq ft)	Mowing Length (mi)	Sheduler Area (sq ft)	Task ID	Asset ID	Pass or Fail	Inspected Date	Inspector	Inspection Resolution
7/1/2024	7/1/2024	WARRICK DR	5155 WICK LANE	5155 WICK LANE	563.00	25.00	0.15	0.16	0.00	000002	R000-0000	Not Inspected		James Mouser	
7/1/2024	7/1/2024	WARRICK DR	TORRIDGE WAY	N END	4,120.00	65.00	0.15	0.18	0.00	000002	R000-2917	Not Inspected		James Mouser	
7/1/2024	7/1/2024	WARRICK DR	TORRIDGE WAY	TORRIDGE WAY	2,222.00	60.00	0.16	0.41	0.00	000008	R000-2918	Not Inspected		James Mouser	
7/1/2024	7/1/2024	BRIDGEMAN ROAD	DUNN AVE	DUNN RD	12,779.00	60.00	17.60	2.42	0.00	000024	R000-438	Not Inspected		James Mouser	
7/1/2024	7/1/2024	WARRICK DR	WARRICK DR	TORRIDGE WAY	3,877.00	50.00	0.19	1.04	0.11	000004	R000-7	Not Inspected		James Mouser	
7/1/2024	7/1/2024	SARATOGA RD	SHED	END OF HIGHWAY	6,551.00	50.00	7.06	1.16	0.00	000005	R000-1279	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	ARROWHOOT	BLANDING	3,945.00	100.00	0.17	1.50	1.28	000011	R000-4	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	STARKE MILL ROAD	END OF STARKE MILL ROAD	780.00	60.00	0.06	0.11	0.00	000012	R000-56	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	STARKE MILL ROAD	STARKE MILL ROAD	5,045.00	94.00	10.88	0.91	0.00	000020	R000-1302	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	WEXFORD	HANFORD	4,860.00	100.00	11.16	1.84	1.13	000023	R000-4	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	HANFORD	ARROWHOOT	5,094.00	125.00	14.62	1.93	1.16	000022	R000-5	Pass	7/1/2024	James Evans	
7/1/2024	7/1/2024	ARCADE FOREST ROAD AND METEON	CHERRYBARK DAMS	CROSS DAMS	1,329.00	40.00	0.49	0.38	0.16	000022	R000-269	Pass	7/1/2024	James Evans	
6/29/2024	7/1/2024	CHERRYBARK DAMS	DUNN RD	DUNN RD	12,670.00	60.00	11.60	2.89	0.00	000022	R000-1238	Not Inspected		James Mouser	
6/29/2024	7/1/2024	HARRIS FINE LA	S END	S END	1,384.00	50.00	0.82	0.19	0.00	000024	R000-1611	Not Inspected		James Mouser	
6/29/2024	7/1/2024	HARRIS FINE LA	DEAD END	DEAD END	860.00	50.00	0.43	0.19	0.00	000023	R000-68	Not Inspected		James Mouser	
6/29/2024	7/1/2024	HANFORD	HANFORD	E TO RR	610.00	20.00	0.28	0.11	0.00	000024	R000-611	Not Inspected		James Mouser	
6/29/2024	7/1/2024	HANFORD	DUNN RD	DEAD END	2,343.00	25.00	1.46	0.48	0.00	000025	R000-1211	Not Inspected		James Mouser	
6/29/2024	7/1/2024	WEXFORD	DUNN RD	S END	2,333.00	22.00	1.18	0.66	0.00	000026	R000-124	Not Inspected		James Mouser	
6/29/2024	7/1/2024	WEXFORD	CHERRYBARK DAMS	CHERRYBARK DAMS	1,329.00	20.00	0.40	0.40	0.00	000028	R000-513	Not Inspected		James Mouser	

Pictured: Custom Contractor Report



Pictured: User dashboard

# Staff Engagement & Training

- Workflow process mapping with core team at the District
- Recommendations & implementation
- Reoccurring training & improvement





# THANK YOU!

Daniel Johns, GISP  
904-451-5353 | JohnsD@etminc.com

**ETM** ENGLAND-THIMS & MILLER

Project Name and Date Appeared on List	Start Date	End Date	% Complete	Est. Cost	Cost Under Contract (to-date) *denotes approximate cost	Funding Source	EOR/Vendor	Responsible Party	Comments
Anthem Parkway Ph 5A (North Park to Avalon)  6/7/2022	2nd quarter 2023	Anthem Parkway Roadway: 1st Quarter 2025 IPS #4: 1st Quarter 2026	100% Design 70% Construction	\$10,264,854	*\$8,465,950	2023 Bonds and future 2025 Bond Issuance	Daniel Hartley	Allyson Holland (District)	Project under construction. Ave Maria Blvd is complete other than certification through AMUC and Collier County, both of which are in process. Anthem Parkway: Drainage installation is nearly complete; outfalls to lake need to be installed. Pressure pipe installation is anticipated to be complete by Dec 2024. Roadway conduit crossing installation is in progress and is anticipated to be completed shortly following pressure pipe completion. Roadway construction will follow pressure pipe and roadway conduit crossing installation. Design and permitting for IPS #4, Irrigation Lake, and Master AMUC Lift Station in progress. New construction contracts, or change orders to existing construction contracts, will be required for these and related facilities.
Anthem Parkway Ph 5B (Includes roundabout at PJPII)  6/7/2022	4th quarter 2024	1st Quarter 2026	90% Design	\$8,394,852	*\$278,000	2023 Bonds and future 2025 Bond Issuance	Daniel Hartley	Allyson Holland (District)	Permit applications have been submitted to Collier County, AMUC, and South Florida Water Management District permitting.
Arthex Commerce Park Phase 2  5/7/2024	2/1/2024	1/15/2025	100% Design 65% Construction	\$2,402,283	\$2,426,195	Developer Contribution Agreement, partial 2023 bonds, and future 2025 bonds	David Hurst	AMD and District	Lake excavation is complete and road is paved. Filling of berm is ongoing. Landscape will commence after berm is complete.
Owens Roundabout, handicap parking space, and signage 6/6/2023	9/10/2024	12/31/2024	100% Design 25% Construction	\$98,000	\$97,949	FY23/24 O&M Budget	Ted Tryka	Ted Tryka (District)	Construction commenced at Owens roundabout. Concrete poured, pavers onsite.
Oil Well Road Lighting & Sign Project 10/3/2023	1/17/2024	12/15/2024	100% Design 95% Construction		\$544,758	2023 Bonds	Ted Tryka	Ted Tryka (District)	Light poles are active and working. Awaiting final inspection from Collier County.
Asset Management  11/1/2022	10/1/2023	Ongoing	90%	\$115,000	\$115,000	FY24/25 O&M Budget	ETM	Allyson Holland (District)	Field staff utilizing Cartegraph daily to track asset management. Working with ETM to begin onboarding with Bob Lee and Davey Tree.
Reserve Study  8/6/2024	11/1/2023	2/1/2025	75%	\$11,000	\$11,000	FY23/24 O&M Budget	Reserve Advisors	Allyson Holland (District)	District manager met with Reserve Advisors to discuss the changes to the study on Tuesday 10/22; meeting was delayed twice due to hurricane recovery in the Tampa area. After the reserve study is updated, staff will distribute to the Board and a future meeting agenda will include an item to discuss and accept the study, and discuss funding the reserves.

**To:** Board of Supervisors

**From:** Allyson Holland, P.E., District Manager

**Date:** November 25, 2024

**Board Meeting Date:** December 3, 2024

---

**SUBJECT**

Consider approval of a Funding Agreement between Lennar Homes, LLC and the District for staff to engage and analyze the reallocation of Series 2021 Bond Proceeds with respect to the development within The National Golf & Country Club at Ave Maria.

**STAFF RECOMMENDATION**

Staff recommends the Board of Supervisors approve the Funding Agreement between Lennar Homes, LLC and the District for staff to engage and analyze the reallocation of Series 2021 Bond Proceeds with respect to the development within The National Golf & Country Club at Ave Maria.

**GENERAL INFORMATION**

The Board of Supervisors unanimously approved for staff to engage and analyze the reallocation of Series 2021 Bond Proceeds with respect to the development within the National Golf & Country Club at Ave Maria at the November 12, 2024 Board Meeting. The proposed Funding Agreement was prepared to provide a formal document that details the terms of the financial support for staff engagement to analyze the documents provided by Lennar Homes, LLC (Lennar). Legal Counsel recommends this Funding Agreement be executed to document Lennar's commitment to providing financial support.

**PROCUREMENT REVIEW**

Not applicable.

**DISTRICT ENGINEER REVIEW**

Not applicable at this time.

**DISTRICT LEGAL COUNSEL REVIEW**

The District Legal Counsel has reviewed and approved the Funding Agreement.

**FUNDING REVIEW**

Not applicable.

Attachments

**FUNDING AGREEMENT  
BETWEEN THE AVE MARIA STEWARDSHIP COMMUNITY DISTRICT AND  
LENNAR HOMES, LLC**

This Funding Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between:

**AVE MARIA STEWARDSHIP COMMUNITY DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 2004-461, Laws of Florida, and located in Collier County, Florida, whose mailing address is 2501A Burns Road, Palm Beach Gardens, Florida 33410 (the "District"), and

**LENNAR HOMES, LLC** a Florida limited liability company and a landowner in the District, whose mailing address is 10481 Ben C Pratt/Six Mile Cypress Pkwy., Ft. Myers, Florida 33966 (the "Developer").

**RECITALS**

**WHEREAS**, the District was established by Chapter 2004-461, Laws of Florida, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

**WHEREAS**, the District previously accessed the public bond market to issue the Ave Maria Stewardship Community District (Collier County, Florida) \$11,340,000 Capital Improvement Revenue Bonds, Series 2021 (Ave Maria National Project) (the “Series 2021 Bonds”) to provide for the financing of certain capital improvements, facilities, and services to benefit the lands within a portion of the property known as The National at Ave Maria located within the District (the “Series 2021 Project”); and

**WHEREAS**, the Developer has requested a modification of the Series 2021 Project a copy of which is attached hereto as **Exhibit A** (the “Project Modification Request”); and

**WHEREAS**, the District Board of Supervisors (the “Board”) authorized District staff to review the Project Modification Request; and

**WHEREAS**, the District and the Developer desire to enter into this Agreement to provide funds to enable the District to commence review of the Project Modification Request and preparation of any necessary documents for presentation to the Board.

**NOW, THEREFORE**, based upon good and valuable consideration and the mutual covenants of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. PROVISION OF FUNDS.** Developer agrees to make available to the District such monies as are necessary to proceed with review of the Project Modification Request and

preparation of any necessary documents for presentation to the Board. Nothing herein shall obligate District Board to take any action beyond review and discussion of materials prepared and presented by District staff in connection with the Project Modification Request.

**A.** Developer agrees to provide to the District any such monies upon receipt of an invoice from the District requesting such funds. Such funds, and all future funds provided pursuant to this Agreement, may be supplied by check, cash, wire transfer or other form of payment deemed satisfactory in the sole discretion of the District as determined by the District Manager. The District agrees to authorize District staff, including the District Engineer, District Manager, and District Counsel to proceed with the work contemplated by this Agreement, and to retain other professional assistance as may be necessary to proceed with the work contemplated by this Agreement.

**B.** Developer and the District agree that all fees, costs or other expenses incurred by the District for the services of the District's Engineer, Counsel, Methodology Consultant or other professionals, for the work contemplated by this Agreement shall be paid solely from the funds provided by Developer pursuant to this Agreement. Such payments shall be made in accordance with the District's normal invoice and payment procedures. The District agrees that any funds provided by Developer pursuant to this Agreement shall be used solely for fees, costs, and expenses arising from or related to the work contemplated by this Agreement.

**C.** The District agrees to provide to Developer, on a monthly basis, copies of all invoices, requisitions, or other bills for which payment is to be made from the funds provided by Developer. The District agrees to provide to Developer, monthly, a statement from the District Manager showing funds on deposit prior to payment, payments made, and funds remaining on deposit with the District.

**D.** Developer agrees to provide funds within fifteen (15) days of receipt of written notification from the District Manager of the need for such funds.

**E.** In the event that Developer fails to provide any such funds pursuant to this Agreement, Developer and the District agree the work may be halted until such time as sufficient funds are provided by Developer to ensure payment of the costs, fees or expenses which may be incurred in the performance of such work.

**2. TERMINATION.** Developer and District agree that Developer may terminate this Agreement without cause by providing ten (10) days written notice of termination to the District. Any such termination by Developer is contingent upon Developer's provision of sufficient funds to cover any and all fees, costs or expenses incurred by the District in connection with the work to be performed under this Agreement as of the date by when notice of termination is received. Developer and the District agree that the District may terminate this Agreement due to a failure of Developer to provide funds in accordance with Section 1 of this Agreement, by providing ten (10) days written notice of termination to Developer; provided, however, that the Developer shall be provided a reasonable opportunity to cure any such failure.

**3. DEFAULT.** A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of damages, injunctive relief and/or specific performance.

**4. ENFORCEMENT OF AGREEMENT.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the substantially prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees, paralegal fees and expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

**5. AGREEMENT.** This instrument shall constitute the final and complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

**6. AMENDMENTS.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

**7. AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

**8. NOTICES.** All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

**A. If to District:** Ave Maria Stewardship Community District  
2501A Burns Road  
Palm Beach Gardens, Florida 33410  
Attn: District Manager

**With a copy to:** Kutak Rock LLP  
107 West College Avenue  
Tallahassee, Florida 32301  
Attn: District Counsel

**B. If to Developer:** Lennar Homes, LLC  
10481 Ben C. Pratt/Six Mile Cypress Pkwy.  
Ft. Myers, Florida 33966  
Attn: \_\_\_\_\_

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. Notices delivered after 5:00 p.m. (at the place of

delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

**9. THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

**10. ASSIGNMENT.** Neither party may assign this Agreement or any monies to become due hereunder without the prior written approval of the other party.

**11. CONTROLLING LAW.** This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

**12. EFFECTIVE DATE.** The Agreement shall be effective after execution by both parties hereto and shall remain in effect unless terminated by either of the parties hereto.

**13. PUBLIC RECORDS.** Developer understands and agrees that all documents of any kind provided to the District or to District Staff in connection with the work contemplated under this Agreement are public records and are treated as such in accordance with Florida law.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



**IN WITNESS WHEREOF**, the parties execute this Agreement to be effective the day and year first written above.

**ATTEST:**

**AVE MARIA STEWARDSHIP  
COMMUNITY DISTRICT**

\_\_\_\_\_  
Secretary / Assistant Secretary

\_\_\_\_\_  
Chairperson, Board of Supervisors

**WITNESSES:**

**LENNAR HOMES, LLC**  
a Florida limited liability company

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

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

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

**Exhibit A**

**Alex Hinebaugh**  
**Director of Land Development**  
**Lennar Homes, LLC**  
**10481 Six Mile Cypress Parkway**  
**Fort Myers, Florida 33966**  
[alex.hinebaugh@lennar.com](mailto:alex.hinebaugh@lennar.com)  
239-770-5127  
**September 5<sup>th</sup>, 2024**

**Ave Maria Stewardship Community District Board**  
**2501A Burns Rd**  
**Palm Beach Gardens, FL 33410**

Dear Members of the AMSCD Board,  
I am writing to formally request a modification to the project scope for The National Golf and Country Club at Ave Maria. After careful consideration, we have identified the need to modify the project scope and acquisitions of infrastructure to better align with our goals and objectives.

The proposed modifications include Lennar purchasing the roads back from the District and in turn, giving the district additional infrastructure (not including roadways) in our phases 3 and 4. These changes are essential to address the evolving needs of the project and to ensure its successful operation.

We believe that these modifications will significantly enhance the overall quality and functionality of the project. The revised scope will allow us to avoid any further issues at the front gate of the community and allow our residents to have a better sense of security about who is coming through the front gate.

We kindly request the AMSCD Board's consideration and approval of these modifications. We are committed to providing any additional information or documentation required to support this request. Please do not hesitate to contact me if you have any questions or need further clarification. Thank you for your attention to this matter. We look forward to your favorable response.

Sincerely,

**Alex Hinebaugh**  
**Director of Land Development**  
**Lennar Homes LLC**

**To:** Board of Supervisors  
**From:** Allyson Holland, P.E., District Manager  
**Date:** November 25, 2024

**Board Meeting Date:** December 3, 2024

---

**SUBJECT**

Consider Approval of Agreement with Motorola Solutions, Inc. for Security Improvements and Consider Approval of Agreement with Collier County Sheriff's Office.

**STAFF RECOMMENDATION**

Staff recommends Approval of Agreement with Motorola Solutions, Inc. for Security Improvements and recommends Approval of Agreement with Collier County Sheriff's Office.

**GENERAL INFORMATION**

The Ave Maria Stewardship Community District (District) staff began meeting with Collier County Sheriff's Office (CCSO) earlier this year to discuss improving safety and security at Ave Maria. CCSO advised that security cameras will improve CCSO's investigative capabilities within the Ave Maria community. CCSO advised it will not actively monitor the cameras, they will be used for law enforcement purposes only as-needed. The District will not monitor or access the camera footage. The proposed cameras provided by Motorola Solutions (Vigilant) are used by numerous local agencies, including the CCSO and Collier County Public Schools. Motorola Solutions provides turnkey management of the system; to include repairs, maintenance, and replacement of faulty units. The District will have the opportunity to gradually expand the use of the Vigilant cameras throughout the District. Pricing for the hardware and services were obtained utilizing Cooperative Purchasing terms within Sourcewell contract 101223. It should be noted that the District's Records Retention Policy will need to be revised to allow for deletion of security system footage after 30 days and this will be brought before the Board of Supervisors in January 2025. As currently proposed, the District will not monitor or have access to the cameras, they are anticipated to be used solely by the CCSO. Except in very limited circumstances, the security system footage and camera location information is confidential and exempt from disclosure under Florida's public records laws. The proposed camera locations have been redacted from Agreement with Motorola Solutions. This item also includes an agreement between the District and the CCSO granting the CCSO access to the security system.

### **PROCUREMENT REVIEW**

The security system agreement is under the \$195,000 threshold which would require sealed procurement. Further the District is able to obtain advantageous pricing through the use of the Sourcewell agreement which is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota that offers cooperative procurement solutions to government entities. The District may participate in this cooperative procurement agreement.

### **DISTRICT ENGINEER REVIEW**

Not applicable.

### **DISTRICT LEGAL COUNSEL REVIEW**

The District Legal Counsel has reviewed and approved the attached security system agreement and agreement for legal form and sufficiency (noting negotiation is limited because of the Sourcewell agreement cooperative pricing). State of Florida required contractual items are included as Exhibit B to the Agreement.

The District Legal Counsel has reviewed and approved the attached agreement with CCSO regarding connection to and use of the District's security system.

### **FUNDING REVIEW**

Sufficient funding for security improvements is available. The adopted FY 2024-2025 Maintenance Budget includes a Public Safety Projects line item in the amount of \$250,000.00.

Attachments



**MOTOROLA SOLUTIONS**

# Ave Maria Stewardship Community District

November 5<sup>th</sup>, 2024

The design, technical, and price information furnished with this proposal is proprietary information of Motorola Solutions, Inc. (Motorola). Such information is submitted with the restriction that it is to be used only for the evaluation of the proposal, and is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the proposal, without the express written permission of Motorola Solutions, Inc.

MOTOROLA, MOTO, MOTOROLA SOLUTIONS, and the Stylized M Logo are trademarks or registered trademarks of Motorola Trademark Holdings, LLC and are used under license. All other trademarks are the property of their respective owners. © 2023 Motorola Solutions, Inc. All rights reserved.

Allyson Holland  
Ave Maria Stewardship Community District  
5080 Annunciation Circle #101  
Ave Maria, FL 34142

Subject: Proposal for new Avigilon Cameras

Dear Allyson,

Motorola Solutions, Inc. ("Motorola Solutions") is pleased to have the opportunity to provide Ave Stewardship Community District ("District") with high-quality Avigilon cameras. The Motorola Solutions team has taken great care to propose a solution that will meet your needs and provide unsurpassed value.

The products and services described in this proposal shall be provided under the terms and conditions of the Sourcewell Contract 101223 and its applicable Master Customer Agreement and applicable Addenda. Furthermore, this proposal shall remain valid through December 19th, 2024. The District may accept the proposal by delivering to Motorola a signed copy of the Master Customer Agreement and PO referencing this proposal. Alternatively, Motorola Solutions would be pleased to address any concerns regarding the proposal. Any questions regarding this proposal can be directed to Brian Wahl, Motorola Solutions Account Executive at 941.713.6740 ([Brian.wahl@motorolasolutions.com](mailto:Brian.wahl@motorolasolutions.com)).

We thank you for the opportunity to provide the district with "best in class" solutions and we hope to strengthen our relationship by implementing this project. Our goal is to provide you with the best products and services available in the communications industry.

Sincerely,



Maurizio Callari  
Area Sales Manager - Florida  
Motorola Solutions, Inc

# 1. Summary

Open, scalable, secure, and easy to use, Alta Video is an enterprise-grade, cloud-based AI video management system (VMS) equipped with integrated machine learning capabilities.

## 1.1. Achieve true proactive security with AI analytics

Get greater insight into what's happening at all your sites, at any moment, from anywhere in the world. Leverage AI-driven intelligence to accurately identify potential security threats, so you can take control of the situation. With Alta Video cloud-based video analytics, you can:

- Detect and classify anomalies based on perimeters and behaviors
- Differentiate between people, vehicles and other objects
- Map movement across your sites
- Receive real-time alerts with thumbnails, time and location data

## 1.2. Investigate smarter and faster

Alta Video offers smart, intuitive search tools that can transform time-intensive review of surveillance footage into fast answers, empowering security operators.

- Search one or more cameras and specify a time range
- Find people and filter by apparent gender and clothing color
- Locate vehicles based on type, color or license plate
- Match against a reference image for people or vehicles

## 1.3. Enhance your operational awareness

Use data and insight from video analytics and sensors to optimize business processes and efficiencies, and improve the customer experience.

- Optimize cleaning, heating and cooling based on usage
- Use hot-desking metrics to improve productivity and planning
- Understand traffic flows in retail and public venues
- Identify hot spots and high-traffic areas to improve customer experience

## 1.4. Secure and scalable, on the camera and in the cloud

Alta Video makes compliance easier with a security-by-default approach, providing peace of mind for organizations. It's never been easier to protect privacy and prevent cybersecurity threats with:

- Automatic software updates from the cloud
- End-to-end encryption of data and metadata
- Secure, remote access via a browser or mobile app
- Scalable, secure storage on the camera or in the cloud



## 2. Scope of Work

### 2.1. District

- 2.1.1. Provide, install and configure Avigilon IP cameras listed in the pricing tables.
- 2.1.2. Provide, install, and configure PoE switches listed in the pricing tables
- 2.1.3. Configure the new Avigilon Alta Aware Cloud Video Management System for all cameras and user access/permissions.

### 2.2. Notes

- Pricing does not include unknown costs such as permitting, construction, or electrical.
- Pricing is valid until 12/19/24.
- Cameras require internet connectivity for connection via Alta Aware Portal.

### 2.3. Customer Responsibilities

- Customer is responsible for providing existing and usable pole(s) at specified locations to mount all equipment for optimal camera coverage.
- Customer is responsible for power and internet connectivity at the specified locations.
- Customer is responsible for providing site access.
- Customer is responsible for LTE Data Service with SIM card for LTE Routers.

## 3. Pricing Summary

District Cameras		
<b>Cameras</b>		
Item #	Description	Qty
32C-H5A-4MH-30	8MP 4 head H5A Multisensor Camera; Alta 30 Day	13
<b>Accessories</b>		
Item #	Description	Qty
PLMT-1001	Pole Mount for Large Pendant WLMT-1001	13
WLMT-1001	Wall Mount for large pendant camera	13
H4AMH-AD-IRIL1	Optional IR illuminator ring, for use with H5AMH-DO-COVR1.	13
H5AMH-AD-PEND1	Outdoor pendant mount adapter	13
H5AMH-DO-COVR1	Dome bubble and cover	13
<b>Networking</b>		

Item #	Description	Qty
ES-PS-S4-NPC	Managed switch, 5 port, Outdoor IP66, -40°C (-40°F) to 50°C (122°F), Gigabit Ethernet, AC power input. 1x SFP uplink and 4 port RJ45. No power cord. Maximum PoE power allocation: Up to 4 ports of PoE+ each, or 2 ports of 60W PoE each. In 60W PoE mode	13
ES-PS-MNT-POLE	Pole mount bracket for ES-PS-S4 switch.	13
<b>Software Subscription</b>		
Item #	Description	Qty
AWA-CLD-5Y	Alta Aware License - 5 Year	13
<b>Services</b>		
Item #	Description	Qty
Install	Installation, Setup, and Configuration	13
	<b>MSRP Total</b>	<b>\$182,089.71</b>
	<b>Sourcewell Contract Discount</b>	<b>\$18,208.97</b>
	<b>2024 Incentive Discount-Valid until 12/19</b>	<b>\$14,567.18</b>
	<b>Grand Total</b>	<b>\$149,313.56</b>

## 4. Payment Milestones & Billing

**Table 4-1: Payment Milestones**

Payment Milestones		
Contract Signature & Execution (Due on Receipt)	50%	\$74,656.78
Hardware Delivery	50%	\$74,656.78
Total Milestone Payments	100%	\$149,313.56

Motorola Solutions shall invoice the district in accordance with the Table 1 - 3: Payment Milestones. Motorola Solutions shall submit all invoices referencing the applicable billing milestone(s) submitted for payment to the district, at 5080 Annunciation Circle, Ave Maria, FL 34142 [aholland@sdsinc.org](mailto:aholland@sdsinc.org). Except for payments due on receipt, the Police Department will make payments to Motorola within thirty (30) days after the date of each invoice. The Police Department will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution.

## Contractual Documentation

Pursuant to Section 6, subsection B of the Sourcewell Contract Number 101223-MOT, the following additional terms and conditions apply to this offering.

### Motorola Solutions Customer Agreement

This Motorola Solutions Customer Agreement (the “**MCA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below (“**Customer**”). Motorola and Customer will each be referred to herein as a “**Party**” and collectively as the “**Parties**”. This Agreement (as defined below) is effective as of the date of the last signature (the “**Effective Date**”).

WHEREAS, Customer desires to purchase from Motorola and Motorola desires to sell to Customer certain Public Safety Equipment, Products and Services; and

WHEREAS, Sourcewell (“Sourcewell”), a State of Minnesota local government agency and service cooperative offering cooperative procurement solutions to government entities that access Sourcewell’s cooperative purchasing contracts (“Participating Entities”); and

WHEREAS, Sourcewell and Motorola entered into a contract identified as 101223-MOT, which provides that Participating Entities (including Customer) may purchase public safety surveillance products from Motorola pursuant to certain terms contained therein; and

WHEREAS, pursuant to Article 6.B of the Contracts, Motorola and Customer now wish to enter into this Agreement to delineate the specific terms of the purchase of Public Safety Equipment, Products and Services offered by Motorola to the Customer.

#### Section 1. Agreement.

**1.1. Scope; Agreement Documents.** This MCA governs Customer’s purchase of Products and Services (as each are defined below) from Motorola. Additional terms and conditions applicable to specific Products and Services are set forth in one or more Motorola prepared or agreed upon addenda attached to this MCA (each an “**Addendum**”, and collectively the “**Addenda**”). This MCA, the Exhibits, Addenda, and Motorola-provided Proposal collectively form the Parties’ “**Agreement**”.

**1.2. Attachments.** The Exhibits listed below will be attached hereto and incorporated into and made a part of this Agreement:

Exhibit A          Motorola Proposal dated 11/5/24

Exhibit B          Additional Florida Terms

**1.3. Order of Precedence.** In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits they will be resolved in their listed order, and 2) Each Addendum will control with respect to conflicting terms in the Agreement, but only as applicable to the Products and Services described in such Addendum.

#### Section 2. Definitions.

**“Authorized Users”** means Customer’s employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of Motorola, and the entities (if any) specified in a Proposal or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

**“Change Order”** means a written amendment to this Agreement after the effective date that alters the work, the contract sum, the contract time, or other change mutually decided between the Parties.

**“Communications System”** is a solution that includes at least one radio Product, whether devices, software, or infrastructure, and requires Integration Services to deploy such radio Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer.

**“Contract Price”** means the price for the Communications System and implementation Services, excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit A “Payment” or the pricing pages of the Proposal, recurring fees for maintenance, SUA, or Subscription Software are included in the Contract Price.

**“Confidential Information”** means any and all non-public information provided by one Party to the other that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable business person would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services.

**“Customer Contact Data”** has the meaning given to it in the DPA.

**“Customer Data”** has the meaning given to it in the DPA.

**“Customer-Provided Equipment”** means components, including equipment and software, not provided by Motorola which may be required for use of the Products and Services.

**“Data Processing Addendum”** or **“DPA”** means the Motorola Data Processing Addendum applicable to processing of Customer Data for US customers, as updated, supplemented, or superseded from time to time. The DPA is located at [https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards\\_terms-conditions/motorola\\_solutions\\_united\\_states\\_data\\_processing\\_addendum\\_online\\_version.pdf](https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/motorola_solutions_united_states_data_processing_addendum_online_version.pdf) and is incorporated into and made a part of this Agreement for all purposes pertaining to the contents of the DPA. Where terms or provisions in the Agreement conflict with terms or provisions of the DPA, the terms or provisions of the DPA will control with respect to the contents of the DPA.

**“Documentation”** means the documentation for the Equipment, software Products, or data, that is delivered with the Products and Services that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information.

**“Equipment”** means hardware provided by Motorola.

**“Equipment Lease-Purchase Agreement”** means the agreement by which Customer finances all or a portion of the Contract Price.

**“Feedback”** means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services;

**“Fees”** means charges applicable to the Products and Services.

**“Integration Services”** means the design, deployment, and integration Services provided by Motorola in order to design, install, set up, configure, and/or integrate the applicable Products as agreed upon by the Parties.

**“Licensed Software”** means licensed software which is either preinstalled on Equipment or installed on Customer-Provided Equipment and licensed to Customer by Motorola for a perpetual or other defined license term.

**“Maintenance and Support Services”** means the break/fix maintenance, technical support, or other Services (such as software integration Services) described in the applicable statement of work.

**“Motorola Data”** means data owned or licensed by Motorola and made available to Customer in connection with the Products and Services;

**“Motorola Materials”** means proprietary software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party). Products and Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials

**“Non-Motorola Materials”** means collectively, Customer or third-party software, services, hardware, content, and data that is not provided by Motorola.

**“Proposal”** means solution descriptions, pricing, equipment lists, statements of work (“SOW”), schedules, technical specifications, quotes, and other documents setting forth the Products and Services to be purchased by Customer and provided by Motorola. The Proposal may also include an ATP, Acceptance Test Plan, depending on the Products and Services purchased by Customer.

**“Products”** or **“Product”** is how the Equipment, Licensed Software, and Subscription Software being purchased by the Customer will collectively be referred to in this Agreement (collectively as “Products”, or individually as a “Product”).

**“Professional Services”** are Services provided by Motorola to Customer under this Agreement the nature and scope of which are more fully described in the Proposal and Section 2.2.5 of this Agreement.

**“Prohibited Jurisdiction”** means any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations.

**“Process”** or **“Processing”** have the meaning given to them in the DPA

**“Services”** means services related to purchased Products as described in the Proposal.

**“Service Completion Date”** means the date of Motorola’s completion of the Services described in a Proposal.

**“Service Use Data”** has the meaning given to it in the DPA.

**“Site”** or **“Sites”** means the location where the Integration Services or Maintenance and Support Services will take place.

**“Software System”** means a solution that includes at least one software Product and requires Integration Services to deploy such software Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

“Subscription Software” means licensed cloud-based software-as-a-service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by Motorola on a subscription basis.

“Third-Party Data” has the meaning given to it in the DPA.

“Term” means the term of this MCA which will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Proposal in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein.

### **Section 3. Products and Services.**

**3.1. Products.** Motorola will (a) sell Equipment, (b) Licensed Software, and (c) Subscription Software to Customer, to the extent each is set forth in this Agreement. At any time during the Term (as defined below), Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in this Agreement.

#### **3.2. Services.**

**3.2.1.** Motorola will provide Services, to the extent set forth in this Agreement.

**3.2.2.** Integration Services; Maintenance and Support Services. Motorola will provide (a) Integration Services at the applicable Sites, agreed upon by the Parties or (b) Maintenance and Support Services, each as further described in the applicable statement of work. Maintenance, Support Services and Integration Services will each be considered “Services”, as defined above.

**3.2.3.** Service Proposals. The Fees for Services will be set forth in Motorola’s Quote or Proposal. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, this Agreement.

**3.2.4.** Service Completion. Services described in a Proposal will be deemed complete upon the Service Completion Date, or as Services are renewed or terminated.

#### **3.2.5. Professional Services**

**3.2.5.1.** Assessment of Systems & Operations. If Customer is purchasing Professional Services to evaluate or assess networks, systems or operations, Customer acknowledges and agrees that the equipment provided by or used by Motorola to facilitate performance of the Services may impact or disrupt information systems. Except as specifically set forth in the Agreement, Motorola disclaims responsibility for costs in connection with any such disruptions of and/or damage to Customer’s or a third party’s information systems, equipment, voice transmissions, and data, including, but not limited to, denial or access to a legitimate system user, automatic shut-down of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision or delivery of the Service. Motorola agrees to cooperate with Customer to schedule any such potential damage or disruption around Customer’s voice or information technology traffic and use patterns so as to reduce the risk of disruption during working hours.

**3.2.5.2.** Network Security. If Customer is purchasing network security assessment of network monitoring Professional Services, Customer acknowledges and agrees that Motorola does not

guarantee or warrant that it will discover all of Customer's system vulnerabilities or inefficiencies. Customer agrees not to represent to third parties that Motorola has provided such guarantee. Motorola disclaims any and all responsibility for any and all loss or costs of any kind associated with vulnerabilities or security events, whether or not they are discovered by Motorola.

**3.2.5.3. Application Development.** If Customer purchases software application development as part of the Professional Services, the deliverables will be licensed as described in Section 2.5 - Documentation.

**3.2.6. Transport Connectivity Services.** Certain Communications Systems may include one or more transport connectivity services as specified in the Proposal. In addition to the terms of this MCA, transport connectivity services shall also be governed by the terms of Motorola's standard Transport Connectivity Addendum, a copy of which is available here: [https://www.motorolasolutions.com/en\\_us/about/legal/transport-connectivity-addendum.html](https://www.motorolasolutions.com/en_us/about/legal/transport-connectivity-addendum.html).

**3.3. Non-Preclusion.** If, in connection with the Products and Services provided under this Agreement, Motorola performs assessments of its own, or related, products or makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes such efforts nor precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

**3.4. Customer Obligations.** Customer represents that information Customer provides to Motorola in connection with receipt of Products and Services are accurate and complete in all material respects. If any assumptions in the Proposals or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

**3.5. Documentation.** Products and Services may be delivered with Documentation. Documentation is and will be owned by Motorola, unless otherwise expressly agreed in an Addendum or Proposal that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

**3.6. Motorola Tools and Equipment.** As part of delivering the Products and Services, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products and are explicitly listed on the Proposal. The tools and equipment may 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. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all tools and equipment in its possession or control.

**3.7. Authorized Users.** Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services.

- 3.8. Export Control.** Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any Prohibited Jurisdiction), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.
- 3.9.** To obtain any additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in Customer's purchase order will not affect the applicability of this Agreement. Motorola's proposal may include a cover page entitled "Service Agreement" or "Installation Agreement", as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference.
- 3.10. Change Orders.** Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or a Proposal by submitting a Change Order to the other Party . If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

#### **Section 4. Term and Termination.**

- 4.1. Term.** The applicable Addendum or Proposal will set forth the Term for the Products and Services governed thereby.

**4.1.1. Subscription Terms.** The duration of Customer's subscription commences upon delivery of the first Subscription Software (and recurring Services, if applicable) ordered under this Agreement and will continue for a twelve (12) month period or such longer period identified in a Proposal (the "**Initial Subscription Period**") and will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a "**Subscription Term**".) Motorola may increase Fees prior to any Renewal Subscription Year. In such case, Motorola will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year.

Unless otherwise specified in writing, additional Subscription Software or recurring Services purchased under this Agreement will (a) commence upon delivery of such Subscription Software or recurring Service, and continue until the conclusion of Customer's then-current Subscription Term (a "**Partial Subscription Year**"), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Unless otherwise specified in writing, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

- 4.2. Termination.** Either Party may terminate the Agreement or the applicable Addendum or Proposal if the other Party breaches a material obligation under the Agreement and does not cure such breach



within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Proposal may be separately terminable as set forth therein.

- 4.3. Termination for Non-Appropriation.** In the event any identified funding is not appropriated or becomes unavailable, the Customer reserves the right to terminate this Agreement for non-appropriation upon thirty (30) days' advance written notice to Motorola. In the event of such termination, Motorola shall be entitled to compensation for all conforming goods delivered and for all services performed prior to the effective date of termination date.
- 4.4. Suspension of Services.** Motorola may promptly terminate or suspend any Products or Services under a Proposal if Motorola determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola's ability to perform.
- 4.5. Wind Down of Subscription Software.** In addition to the termination rights in this Agreement, Motorola may terminate any Subscription Term, in whole or in part, in the event Motorola plans to cease offering the applicable Subscription Software or Service to customers.
- 4.6. Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, an Addendum, or a Proposal, Customer and the Authorized Users will return or destroy (at Motorola's option) all Motorola Materials and Motorola's Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer agrees to pay Motorola for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer's termination of this Agreement.
- 4.7. Equipment as a Service.** In the event that Customer purchases any Equipment at a price below the published list price for such Equipment in connection with Customer entering into a fixed- or minimum required-term agreement for Subscription Software, and Customer or Motorola terminates the Agreement prior to the expiration of such fixed- or minimum required-term, then Motorola will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the published list price for the Equipment or such other amount set forth in writing. This Section will not limit any other remedies Motorola may have with respect to an early termination.

## **Section 5. Payment, Invoicing, Delivery and Risk of Loss**

- 5.1.** Customer affirms they have signatory authority to execute this contract. The Contract Price of \$149,313.56, excluding taxes, is fully committed and identified, including all subsequent years of contracted services, if applicable. The Customer will pay all invoices as received from Motorola subject to the terms of this Agreement and any changes in scope will be subject to the change order process as described in this Agreement.

Motorola acknowledges the Customer may require the issuance(s) of a purchase order or notice to proceed as part of the Customer's procurement process. However, Customer agrees that the issuance or non-issuance of a purchase order or notice to proceed does not preclude the Customer from its contractual obligations as defined in this Agreement.

**5.2. Fees.** Fees and charges applicable to the Products and Services will be as set forth in the applicable Addendum or Proposal. Changes in the scope of Services described in a Proposal that require an adjustment to the Fees will be set forth in the applicable pricing schedule. Unless otherwise specified in the applicable Proposal, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse Motorola for these or other expenses incurred by Motorola in connection with the Services. The annual subscription Fee for Subscription Software and associated recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in a Proposal. Motorola may suspend the Subscription Software and any recurring Services if Customer fails to make any payments within thirty (30) days of invoice due date when due.

**5.3. Taxes.** The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in a Proposal. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.

**5.4. Invoicing.** Motorola will invoice Customer as described in this Agreement and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in writing. In the event Customer finances the purchase of the Motorola Products and Services contemplated herein via Motorola Solutions Credit Corporation ("MSCC"), invoices for such purchase will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease - Purchase Agreement executed between the parties and the payment schedule enclosed therein shall control payment of the related invoices. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in a Proposal. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

**5.5. Payment.** Customer will pay invoices for the Products and Services provided under this Agreement in accordance with the invoice payment terms set forth in Section 5.4. Generally, invoices are issued after shipment of Equipment or upon Motorola's delivery of Licensed Software, or upon System Completion Date of a Software System, as applicable, but if a specific invoicing or payment schedule is set forth in the Agreement, such schedule will determine the invoicing cadence.

Motorola will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

**5.6. INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-INVOICE. To receive invoices via email:

Customer Account Number: \_\_\_\_\_

Customer Accounts Payable Email: \_\_\_\_\_

Customer CC (optional) Email: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Customer may change this information by giving written notice to Motorola.

**5.7. Delivery, Title and Risk of Loss.** Motorola will provide to Customer the Products (and, if applicable, related Services) set forth in a Proposal, in accordance with the terms of the Agreement. Motorola will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in **Section 5.6** or otherwise provided by Customer in writing, using a carrier selected by Motorola.

Notwithstanding the foregoing and unless otherwise stated in a Equipment Lease - Purchase Agreement, delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by Motorola in accordance with ExWorks, Motorola's premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes.

Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by Motorola, and (b) the date Motorola otherwise makes the Licensed Software available for download by Customer. If agreed upon in a Proposal, Motorola will also provide Services related to such Products. Title to Licensed Software and/or Subscription Software will not pass to Customer at any time.

**5.8. Delays.** Any shipping dates set forth in a Proposal are approximate, and while Motorola will make reasonable efforts to ship Products by any such estimated shipping date, Motorola will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

**5.9. Future Regulatory Requirements.** The Parties acknowledge and agree that certain Services (i.e. cyber) are an evolving technological area and therefore, laws and regulations regarding Services may change. Changes to existing Services required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

## **Section 6. Sites; Customer-Provided Equipment; Non-Motorola Materials.**

**6.1. Access to Sites.** Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the

Services at each applicable Site, including for Motorola to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

- 6.2. Site Conditions.** Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.
- 6.3. Site Issues.** Upon its request, which will not be unreasonably denied, Motorola will have the right to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 6 – Sites; Customer-Provided Equipment; Non-Motorola Materials**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in a Proposal is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.4. Customer-Provided Equipment.** Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify Motorola of any Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.5. Non-Motorola Materials.** In certain instances, Customer may be permitted to access, use, or integrate Non-Motorola Materials with or through the Products and Services. If Customer accesses, uses, or integrates any Non-Motorola Materials with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer's and its Authorized Users' use of the Non-Motorola Materials in connection with the Products and Services. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Materials in connection with providing the Products and Services, including the right for Motorola to access, store, and process such Non-Motorola Materials (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Materials with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Materials. If any Non-Motorola Materials requires access to Customer Data (as defined below), Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Materials to access Customer Data, in connection with the interoperation of such Non-Motorola Materials with the Products and Services.

- 6.6.** Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Materials (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Materials or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-Motorola Materials must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Materials if Motorola believes a violation of law, third-party rights, or Motorola's policies is likely to occur, or if such Non-Motorola Materials poses or may pose a security or other risk or adverse impact to the Products or Services, Motorola, Motorola's systems, or any third party (including other Motorola customers).
- 6.7.** Motorola may provide certain Non-Motorola Materials as an authorized sales representative of a third party as set out in a Proposal. As an authorized sales representative, the third party's terms and conditions, as set forth in the Proposal, will apply to any such sales. Any orders for such Non-Motorola Materials will be filled by the third party. Nothing in this Section will limit the exclusions set forth in **Section 8.2 – Intellectual Property Infringement**.
- 6.8. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Non-Motorola Materials software are governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software. Third party software flow-down terms applicable to Motorola products are located at the following site: [https://www.motorolasolutions.com/en\\_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html)
- 6.9. Prohibited Use.** Customer will not integrate or use, or permit a third party or an Authorized User to integrate or use, any Non-Motorola Materials with or in connection with a Software System or other software Product provided by Motorola under this Agreement, without the express written permission of Motorola.
- 6.10. API Support.** Motorola will use commercially reasonable efforts to maintain its Application Programming Interface ("API") offered solely in connection with any Software System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for 6 months after such version is introduced, but if Motorola determines, in its sole discretion, to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.
- 6.11. Support of Downloaded Clients.** If Customer purchases any software Product that requires a client installed locally on any Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

## **Section 7. Representations and Warranties.**

- 7.1. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

**7.2. Communications System Warranty.** Motorola represents and warrants that, on the date of System Acceptance, (a) the Communications System will perform in accordance with the descriptions in the applicable Proposal in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such Communications System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon System Acceptance (the "Warranty Period").

**7.3.** During the Warranty Period, in addition to warranty services, Motorola will provide Maintenance and Support Services for the Equipment and support for the Motorola Licensed Software pursuant to the applicable maintenance and support Proposal. Support for the Motorola Licensed Software will be in accordance with Motorola's established Software Support Policy ("SwSP"). Copies of the SwSP can be found at [https://www.motorolasolutions.com/en\\_us/about/legal/motorola-solutions-customer-terms/software\\_policy.html](https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html), a copy of which is available to Customer upon written request. If Customer wishes to purchase (a) additional Maintenance and Support Services during the Warranty Period; or (b) continue or expand maintenance, software support, installation, and/or Motorola's Lifecycle Management Services ("LMS") after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document and such terms will be agreed upon in a Proposal. Unless otherwise agreed by the Parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or LMS, will be included in the Maintenance and Support Addendum, LMS Addendum, the applicable Proposals, and the proposal (if applicable). These collective terms will govern the provision of such Services.

**7.4. On-Premises Software System Warranty.** Motorola represents and warrants that, on the System Completion Date, or on the applicable Product Completion Date for a specific Product within such on-premises Software System, if earlier, (a) such Software System or Product will perform in accordance with the descriptions in the applicable Proposals in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such on-premises Software System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the Software System that includes such Products, or on the applicable Product Completion Date, if earlier.

**7.4.1.** On-premises Software Systems as a service and cloud hosted Software Systems are provided as a service and accordingly do not qualify for the On-premises Software System Warranty. System completion, however, for each of these solutions is determined in accordance with **Section 12.2 Software System Completion** below.

**7.5. Motorola Warranties - Services.** Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Proposal; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Proposal.

**7.6. Motorola Warranties - Equipment.** Subject to the disclaimers and exclusions set forth below, (a) for a period of one (1) year commencing upon the delivery of Motorola-manufactured Equipment under **Section 5.7 – Delivery, Title and Risk of Loss**, Motorola represents and warrants that such Motorola-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; and (b) The warranties applicable to Motorola-manufactured Equipment set forth in herein shall be applicable to all radio Equipment purchased hereunder whether or not such Equipment was manufactured by Motorola.

**7.7. Motorola Licensed Software Warranty.** Unless otherwise stated in the License Agreement, for a period of ninety (90) days commencing upon the delivery of Motorola-owned Licensed Software, Motorola represents and warrants that such Licensed Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Licensed Software (as determined by Motorola)

**7.7.1.** As Customer's sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola's sole option, Motorola will either replace the defective Licensed Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis.

**7.7.2.** For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Licensed Software issued by Motorola, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

**7.8. ADDITIONAL WARRANTY EXCLUSIONS.** NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

**7.9. Warranty Claims; Remedies.** To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this Agreement. Unless a different remedy is otherwise expressly set forth herein, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for Motorola's breach of a warranty. Motorola's warranties are extended by Motorola to Customer only, and are not assignable or transferable.

**7.10. Pass-Through Warranties.** Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

**7.11. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE

UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

## **Section 8. Indemnification.**

**8.1. General Indemnity.** Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("Claim") for personal injury, death, or direct damage to tangible property to the extent caused by Motorola's negligence, gross negligence or willful misconduct while performing its duties under this Agreement, except to the extent the claim arises from Customer's negligence or willful misconduct. Motorola's duties under this **Section 8.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise to the extent allowed by applicable law; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

**8.2. Intellectual Property Infringement.** Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product or Service (the "Infringing Product") directly infringes a United States patent or copyright ("Infringement Claim"), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola's duties under this **Section 8.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.

**8.2.1.** If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a prorated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).

**8.2.2.** In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Materials, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Motorola; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than Motorola; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.

**8.2.3.** This **Section 8.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim.



**8.3. Customer Indemnity.** To the extent allowed by applicable law, Customer will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-Motorola Materials, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement; (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola's use of Customer-Provided Equipment, Customer Data, or Non-Motorola Materials in violation of the Agreement. Motorola will give Customer prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

## **Section 9. Limitation of Liability.**

9.1. EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "MOTOROLA PARTIES"), WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES, OR PORTION OF FEES, RELATED TO THE PRODUCT OR INTEGRATION SERVICE UNDER WHICH THE CLAIM AROSE. WITH RESPECT TO ANY SUBSCRIPTION SOFTWARE OR ANY RECURRING SERVICES, THE MOTOROLA PARTIES' TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS RELATED TO SUBSCRIPTION SOFTWARE OR RECURRING SERVICES WILL NOT EXCEED THE TOTAL FEES PAID FOR THE APPLICABLE SUBSCRIPTION SOFTWARE OR RECURRING SERVICE DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE. EXCEPT FOR PERSONAL INJURY OR DEATH, THE MOTOROLA PARTIES WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

9.2. EXCLUSIONS FROM LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT OR SITES; NON-MOTOROLA MATERIALS; THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR CONTENT; OR UNKNOWN OR UNAUTHORIZED COMBINATION OF PRODUCTS AND SERVICES ; (C) LOSS OF DATA, HACKING, RANSOMWARE, THIRD-PARTY ATTACKS OR DEMANDS; (D) MODIFICATION OF PRODUCTS OR SERVICES NOT AUTHORIZED BY MOTOROLA; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

IN ADDITION TO THE FOREGOING EXCLUSIONS FROM DAMAGES, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SOFTWARE OR SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

9.3 Statute of Limitations. Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

## **Section 10. Confidentiality.**

- 10.1. Confidential Information.** In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by disclosing party ("Discloser") by submitting a written document to receiving party ("Recipient") within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.
- 10.2. Obligations of Confidentiality.** During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 10 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees, agents or consultants who must access the Confidential Information for the purpose of providing Services and who are bound by confidentiality terms substantially similar to those in this Agreement and licenses; (c) not copy, reproduce, reverse engineer, decompile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but no less than reasonable care to safeguard against disclosure; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.
- 10.3. Exceptions.** Recipient may disclose Confidential Information to the extent required by law, or a judicial or legislative order or proceeding. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly known or available prior to without breach of this Agreement; (b) is lawfully obtained; or (c) is independently known or developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement.
- 10.4. Ownership of Confidential Information.** All Confidential Information is and will remain the property of Discloser, and will not be copied or reproduced without written permission. Within ten (10) days of receipt of Discloser's written request, Recipient will return or destroy all Confidential Information to Discloser, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy for use only in case of a dispute concerning this Agreement, and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures. Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the

Recipient other than to use it in the manner, and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

## **Section 11. Proprietary Rights; Data; Feedback.**

- 11.1. Motorola Materials.** Customer acknowledges that Motorola may use or provide Customer with access to “Motorola Materials”. Except when Motorola has expressly transferred title or other interest to Customer by way of an Addendum, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights).

This Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

- 11.2. Ownership of Customer Data.** Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in the DPA.

- 11.3. Data Retention and Deletion.** Except as expressly provided otherwise under the DPA, Motorola will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Proposal, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to Motorola in writing before expiration or termination, subject to **Section 15.9 – Notices**. Motorola will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from Motorola through a mutually executed Proposal.

- 11.4. Service Use Data.** Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, and may disclose Service Use Data to third parties. It is Customer’s responsibility to notify Authorized Users of Motorola’s collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to Motorola that it has complied and will continue to comply with this Section.

- 11.5. Third-Party Data and Motorola Data.** Customer will not, and will use reasonable efforts to ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any purpose other than Customer’s internal business purposes; (b) disclose the data to third parties; (c) “white label” such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum.

**11.5.1.** Any rights granted to Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Proposal, or this MCA. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or Motorola's agreement with the applicable Third-Party Data provider.

**11.5.2.** Upon termination of Customer's rights to use any Motorola Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of the Agreement to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Products and Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data not expressly granted in an Addendum or Proposal.

**11.6. Feedback.** Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

**11.7. Improvements: Products and Services.** The Parties agree that, notwithstanding any provision of this Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

## **Section 12. Acceptance**

### **12.1. Communications System Acceptance.**

**12.1.1.** Any Communications System described in the Proposal hereunder (including the Products, Integration Services, and all other components thereof) will be deemed completed upon successful completion of the acceptance procedures ("Acceptance Tests") set forth in the Acceptance Test Plan ("System Acceptance"). Motorola will notify Customer at least ten (10) days before the Communications System testing commences. Upon System Acceptance, the Parties will memorialize this event by promptly executing a certificate documenting such System Acceptance as set forth in Exhibit C. If the Acceptance Test Plan includes separate tests for individual sub-Systems or phases of the Communications System, acceptance of the individual sub-System or phase will occur upon the successful completion of the Acceptance Tests for the sub-Communications System or phase, and the Parties will promptly execute an acceptance certificate for the sub-Communications System or phase. If Customer believes the Communications System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the Communications System that do not materially impair the operation of the Communications System as a whole will not postpone System Acceptance or sub-Communications System acceptance, but will be corrected according to a mutually agreed punch list schedule. This Section applies to Products purchased as

part of a Communications System notwithstanding any conflicting delivery provisions within this Agreement and this Section will control over such other delivery provisions to the extent of a conflict.

**12.1.2. Beneficial Use.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the Communications System before System Acceptance.

**12.1.3.** Customer shall not commence using the system before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for Communications System performance deficiencies that occur prior to System Acceptance or written authorized use. Upon the date Customer begins using the Communications System, Customer assumes responsibility for the use and operation of the Communications System.

**12.2 Software System Completion.** Any Software System described in the Proposal (including the Products, Integration Services, and all other components thereof) will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of each Product that is included in the Software System (unless alternative acceptance procedures are set forth in the Proposal) (the "System Completion Date"). Customer will not unreasonably delay Beneficial Use of any Product within a Software System, and in any event, the Parties agree that Beneficial Use of a Product will be deemed to have occurred thirty (30) days after functional demonstration. For clarity, if a Software System is comprised of more than one Product, Motorola may notify Customer that all Integration Services for a particular Product within the Software System have been completed, and Customer may have Beneficial Use of such Product prior to having Beneficial Use of other Products in the Software System, or of the Software System as a whole. In such case, the Integration Services applicable to such Product will be deemed complete upon Customer's Beneficial Use of the Product ("Product Completion Date"), which may occur before the System Completion Date. As used in this Section, "Beneficial Use" means use by Customer or at least one (1) Authorized User of the material features and functionalities of a Product within a Software System, in material conformance with Product descriptions in the Proposal. This Section applies to Products purchased as part of a Software System notwithstanding any conflicting delivery provisions within this Agreement, and will control over such other delivery provisions to the extent of a conflict.

### **Section 13. Force Majeure; Delays Caused by Customer.**

**13.1. Force Majeure.** Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

**13.2. Delays Caused by Customer.** Motorola's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Proposal). In the event of a delay under this **Section 13.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

**Section 14. Disputes.** The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "Dispute"):

**14.1. Governing Law.** All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless Customer is the United States Government (or an agency thereof) or a

state government or state agency or local municipality within the United States, in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

**14.2. Negotiation; Mediation.** The Parties will attempt to timely resolve the Dispute promptly through good faith negotiations. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Unless otherwise agreed in writing, all in person meetings under this **Section 14.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights must be decided by a court of competent jurisdiction, in accordance with **Section 14.3 – Litigation, Venue, Jurisdiction** below.

**14.3. Litigation, Venue, Jurisdiction.** If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois, or in the case the Customer is the United States, a state agency, or local municipality, then the appropriate court in the State in which the Products and Services are provided. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

## **Section 15. General.**

**15.1. Compliance with Laws.** Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. Motorola may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Proposal), in order to comply with any changes in applicable law.

**15.2. Audit; Monitoring.** Motorola will have the right to monitor and audit use of the Products, including an audit of total user licenses credentialed by Customer for any Subscription Software, which may also include access by Motorola to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("Auditor") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs. In the event Motorola determines that Customer's usage of the Subscription Software during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, Motorola may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the Agreement.

- 15.3. Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.
- 15.4. Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.
- 15.5. Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.
- 15.6. Independent Contractors.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.
- 15.7. Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.
- 15.8. Interpretation.** The section headings in this Agreement are included only for convenience. The words “including” and “include” will be deemed to be followed by the phrase “without limitation”. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.
- 15.9. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.
- 15.10. Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.
- 15.11. Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.4 – Customer Obligations; Section 4.6 – Effect of Termination or Expiration; Section 5 – Payment and Invoicing; Section 7.11 – Warranty Disclaimer; Section 8.3 –

Customer Indemnity; Section 9 – Limitation of Liability; Section 10 – Confidentiality; Section 11 – Proprietary Rights; Data; Feedback; Section 13 – Force Majeure; Delays Caused by Customer; Section 14 – Disputes; and Section 15 – General.

**15.12. Entire Agreement.** This Agreement, including all Exhibits, Addenda, and Proposals, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

**Motorola Solutions, Inc.**

**Customer: Ave Maria Stewardship Community District**

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

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

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

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

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

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

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

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

### **Software License Addendum**

This Software License Addendum (this “**SLA**”) is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement (“**MCA**”) to which it is attached. Capitalized terms used in this SLA, but not defined herein, will have the meanings set forth in the MCA.

**Section 1. Addendum.** This SLA governs Customer’s use of Licensed Software (and, if set forth in a Proposal, related Services) and Subscription Software from Motorola, as applicable, and is an integral part of the Parties’ Agreement.

### **Section 2. Licensed Software License and Restrictions.**

**2.1. Licensed Software License.** Subject to Customer’s and its Authorized Users’ compliance with the Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicensable, and non-exclusive license to use the Licensed Software identified in a Proposal, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by Motorola or authorized Customer-Provided



Equipment (as applicable, the “**Designated Products**”) and solely for Customer’s internal business purposes. Unless otherwise stated in an Addendum or the Proposal, the foregoing license grant will be limited to the number of licenses set forth in the applicable Proposal and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Proposal, Customer may install, access, and use Licensed Software only in Customer’s owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Licensed Software remotely from any location.

**2.2. Subscription License Model.** If the Parties mutually agree that any Licensed Software purchased under this Agreement will be replaced with or upgraded to Subscription Software, then upon such time which the Parties execute the applicable Change Order or Proposal, the licenses granted under this **Section 2 Licensed Software License and Restrictions** will automatically terminate, and such Subscription Software will be governed by the terms of **Section 3 Subscription Software License and Restrictions**.

**2.3. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Licensed Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Licensed Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Licensed Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Licensed Software or Documentation for or to any third party without the prior express written permission of Motorola; (e) take any action that would cause the Licensed Software or Documentation to be placed in the public domain; (f) use the Licensed Software to compete with Motorola; or (g) remove, alter, or obscure, any copyright or other notice.

**2.4. Copies.** Customer may make one (1) copy of the Licensed Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Licensed Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software’s license term. Unless otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Licensed is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time the temporary transfer is discontinued.

**2.5. Resale of Equipment.** Equipment contains embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from Motorola, which will not be unreasonably denied, and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party.

### **Section 3. Subscription Software License and Restrictions.**

**3.1. Subscription Software License.** Subject to Customer’s and its Authorized Users’ compliance with the Agreement, including payment terms, Motorola hereby grants Customer and its Authorized

Users a limited, non-transferable, non-sublicensable, and non-exclusive license to use the Subscription Software identified in a Proposal, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in a Proposal (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Software remotely from any location. No custom development work will be performed under this Addendum.

**3.2. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Software) in connection with their use of the Subscription Software. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Software or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Software or software used to provide the Subscription Software with other software; copy, reproduce, distribute, lend, or lease the Subscription Software or Documentation for or to any third party; take any action that would cause the Subscription Software, software used to provide the Subscription Software, or Documentation to be placed in the public domain; use the Subscription Software to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Software to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Software or its related systems or networks.

**3.3. User Credentials.** If applicable, Motorola will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer's employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising therefrom. To the extent Motorola provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

## **Section 4. Software Systems - Applicable Terms and Conditions**

**4.1. On-Premise Software System.** If Customer purchases an "on-premises Software System," where Licensed Software is installed at Customer Sites or on Customer-Provided Equipment, then, unless otherwise specified in writing that any software is being purchased as Subscription Software, the Licensed Software is subject to Section 2 of the SLA.

**4.1.1. CAD and Records Products.** The terms set forth in this Section 4.1.1. apply in the event Customer purchases any Computer Aided Dispatch ("CAD") or Records Products under the Agreement.

**4.1.1.1. Support Required.** Customer acknowledges and agrees that the licenses granted by Motorola under this SLA to CAD and Records Products for on-premises Software Systems are conditioned upon Customer purchasing Maintenance and Support Services for such Products during the term of the applicable license. If at any time during the term of any such license, Customer fails to purchase associated Maintenance and Support Services (or pay the fees for such Services), Motorola will have the right to terminate or suspend the software licenses for CAD and Record Products.

**4.1.1.2. CJIS Security Policy.** Motorola agrees to support Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS") Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Proposal for the applicable Product. Customer hereby consents to Motorola screened personnel serving as the "escort" within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

**4.2. On-Premise Software System as a Service.** If Customer purchases an "on-premises Software System as a service," where software Products are installed at Customer Sites or on Customer-Provided Equipment, and generally licensed on a subscription basis (i.e., as Subscription Software), then such Subscription Software is subject to Section 3 of the SLA. The firmware preinstalled on Equipment included with an on-premises Software System as a service purchase, and any Microsoft operating system Licensed Software are subject to Section 2 of the SLA.

**4.2.1. Transition to Subscription License Model.** If the Parties mutually agree that any on-premises Subscription Software purchased under this SLA as part of an "on-premises Software System as a service" solution will be replaced with or upgraded to Subscription Software hosted in a data center, then upon such time the Parties execute the applicable agreement, (a) the licenses granted to such on-premises Subscription Software under this SLA will automatically terminate, (b) Customer and its Authorized Users will cease use of the applicable on-premises copies of Subscription Software, and (c) the replacement hosted Subscription Software provided hereunder will be governed by the terms of **Section 4.3 Cloud Hosted Software System**.

**4.2.2. Transition Fee.** Motorola will not charge additional Fees for Services related to the transition to hosted Subscription Software, as described in **Section 4.2.1 – Transition to Subscription License Model**. Notwithstanding the foregoing, subscription Fees may be greater than Fees paid by Customer for on-premises Subscription Software.

**4.2.3. Software Decommissioning.** Upon (a) transition of the on-premises Software System as a service to Subscription Software hosted in a data center or (b) any termination of the Subscription Software license for the on-premises Software System as a service, Motorola will have the right to enter Customer Sites and decommission the applicable on-premises Subscription Software that is installed at Customer's Site or on Customer-Provided Equipment. For clarity, Customer will retain the right to use Licensed Software that is firmware incorporated into Equipment purchased by Customer from Motorola and any Microsoft operating system Licensed Software.

**4.3. Cloud Hosted Software System.** If Customer purchases a "cloud hosted Software System," where the applicable software is hosted in a data center and provided to Customer as a service (i.e., as hosted Subscription Software), then such Subscription Software is subject to Section 3 of the SLA.

**4.4. Additional Cloud Terms.** The terms set forth in this **Section 4.4 – Additional Cloud Terms** apply in the event Customer purchases any cloud-hosted software Products.

- 4.4.1. Data Storage.** Motorola will determine, in its sole discretion, the location of the stored content for cloud hosted software Products. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.
- 4.4.2. Data Retrieval.** Cloud hosted software Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.
- 4.4.3. Maintenance.** Scheduled maintenance of cloud-hosted software Products will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

## **Section 5. Term.**

- 5.1. Term.** The term of this SLA (the "**SLA Term**") will commence upon the Effective Date of the MCA.
- 5.2. Termination - Licensed Software License.** Notwithstanding the termination provisions of the MCA, Motorola may terminate this SLA (and any Agreements hereunder) immediately upon notice to Customer if Customer breaches **Section 2 – Licensed Software License and Restrictions** of this SLA, or any other provision related to Licensed Software license scope or restrictions set forth in a Proposal, EULA, or other applicable Addendum. Upon termination or expiration of the SLA Term, all Motorola obligations under this SLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with Motorola, governing such Services.
- 5.3. Termination - Subscription Software License.** Notwithstanding the termination provisions of the MCA, Motorola may terminate this SLA, or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Software License and Restrictions** of this SLA, or any other provision related to Subscription Software license scope or restrictions set forth therein, or (b) it determines that Customer's use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription Software, Motorola, Motorola's systems, or any third party (including other Motorola customers).
- 5.4.** Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Licensed Software, Subscription Software, and Documentation, and that Customer's breach of the SLA will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Customer breaches this SLA, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).
- 5.5. Applicable End User Terms.** Additional license terms apply to third-party software included in certain software Products which are available online at [www.motorolasolutions.com/legal-flow-downs](http://www.motorolasolutions.com/legal-flow-downs). Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

**Section 6. Copyright Notices.** The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

**Section 7. Survival.** The following provisions will survive the expiration or termination of this SLA for any reason: Section 2 – Licensed Software License and Restrictions; Section 3 -- Subscription Software License and Restrictions; Section 4 -- Software Systems -- Applicable Terms and Conditions; Section 5 – Term; Section 7 – Survival.

### **Avigilon Alta Terms of Service**

These Avigilon Alta Terms of Service (this “Agreement”) govern your use of the Avigilon Alta security suite as a service, software as a service or other hosted offering (the “Services”) made available to you under this Agreement. This Agreement is a binding legal contract between you or the entity on whose behalf you accept this Agreement (“you” and “your”) and Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661, including affiliated companies (“Motorola”). You and Motorola may each be referred to as a “Party” and collectively as the “Parties.” By accessing or using the Services, you agree that you have read, understood and agree to be bound by this Agreement, as amended from time to time. If you do not or cannot agree to be bound by this Agreement, you may not access or use the Services. If you are accessing or using the Services on behalf of a person or an organization, you are agreeing to this Agreement for that person or organization and representing to Motorola that you have authority to bind that person or organization to this Agreement.

1. **Services.** Subject to your continued compliance with this Agreement, you may access and use the Services for your internal business purposes only, in accordance with the Documentation. The Services include access to Motorola’s generally available documentation for use and operation of the Services (the “Documentation”). “Order” means each ordering document (e.g. an order or order form) that references this Agreement or the Services and is between you and one of Motorola’s authorized distributors or resellers pursuant to which you purchase a term-based right to use the Services.
2. **Authorized Users.** Unless otherwise specified in an Order, you will only permit the individuals you authorize (“Authorized Users”) to utilize a username and password (“Account Information”). If you are an employer, you will ensure that all of your Authorized Users comply with the terms of this Agreement and you will be jointly and severally liable for all acts and omissions of Authorized Users related to their access or use of the Services, and any failure by such Authorized User to comply with the terms of this Agreement will constitute a breach by you. You will ensure the security and confidentiality of each Authorized Users’ Account Information, and you are responsible for all activities performed in the Services with the Account Information.
3. **Modifications.** Motorola may, at any time and in its sole discretion, modify, upgrade or release a new version of the Services, or any portion of its features and functions. Unless otherwise expressly and separately agreed to by Motorola, any modification or new version of the Service will be subject to the terms of this Agreement. Documentation for any Service may be updated to reflect such modifications. For clarity, new features or enhancements that are added to any Service may be subject to additional Fees. Motorola will use commercially reasonable efforts to notify you of any material detrimental change to or discontinuation of the Services. If you establish that a change made by Motorola pursuant to this Section has a materially adverse effect on your authorized use of the Services, you may notify Motorola in writing, and Motorola may propose resolutions or work-arounds. If Motorola is unable to provide you with a resolution or work-around reasonably satisfactory to you, then notwithstanding anything to the contrary, you may terminate this Agreement upon written notice to Motorola.
4. **Beta Services.** If Motorola makes any beta version of a Service (“Beta Service”) available to you, you may choose to use such Beta Service at your own discretion, provided that you will

use the Beta Service solely for purposes of your own internal evaluation of such Beta Service. You acknowledge and agree that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Motorola may discontinue any Beta Service at any time. You acknowledge that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

5. **License Grant; Software.** Subject to the terms of this Agreement and the applicable Order, Motorola grants you a limited, non-exclusive license for the Term to access and use the Services for your internal business purposes in a manner consistent with the Documentation. The Services may require the downloading, use, or installation of software (“Software”) to function (e.g. software embedded at your location or on your equipment or systems). Software provided to you as part of the Service may be provided under the end user license agreement included with such software or applicable terms of service. If the Software is not provided with an end user license agreement, Motorola grants you a limited, non-exclusive, non-sublicensable license for the Term to use such Software only to access and use the Services subject to this Agreement. You are responsible for downloading and installing the current version of such Software, as it may be updated from time to time. The Software may periodically check for updates that will be automatically installed on your equipment or systems without providing any additional notice or requiring any additional consent from you. By accepting this Agreement, you agree to receive these types of automatic updates without any additional notice, and you consent to these automatic updates. If you do not want updates, you must stop using the Services and Software and terminate your account; otherwise, you will receive these updates automatically. You acknowledge that installing updates may be required for continued use of the Services and the Software, and you agree to promptly install any updates provided by Motorola.
6. **Availability Service Level.** Unless a different Services availability level is set forth in the Order, Motorola shall use commercially reasonable efforts to make the Services available twenty four (24) hours a day, seven (7) days a week, except for unavailability of Beta Services and unavailability due to (a) system maintenance and planned downtime (of which Motorola shall use reasonable efforts to give prior notice) and (b) any unavailability caused by: (i) your software or hardware or Third Party Software or hardware; (ii) circumstances beyond Motorola’s reasonable control, including but not limited to internet service provider and mobile carrier service availability; and (iii) misuse of the Services or other violations of this Agreement by you.
7. **Restrictions.** You will not (and will not allow others, including the Authorized Users, to) (a) access or use the Services in any manner or for any purpose other than as expressly permitted by this Agreement; (b) make the Services available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (c) reverse engineer, decompile, disassemble, or reprogram the Software or any portion thereof to a human-readable form; (d) modify, alter, tamper with, copy, reproduce or create derivative works of, or merge the Services; (e) publish, distribute, license, lend, sell, lease, host or otherwise commercially exploit the Services; (f) take any action that would cause the Services be placed in the public domain; (g) use the Services to compete with Motorola; (h) remove, alter, or obscure, any copyright, trademark, proprietary rights, disclaimer or warning notice; (i) share user credentials (including among Authorized Users); (j) use the Services to store or transmit that contains or is used to initiate a denial service attack, software viruses or other harmful or malicious code; (k) work around any technical or security restrictions or limitations in the Services; or (l) access or attempt to gain unauthorized access to any Service by means other than an interface provided by Motorola.
8. **Third-Party Products.** The Services may permit access to products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible Services (“Third-Party Products”). You agree to comply with, and agree to be bound to, the terms and conditions, including the applicable third party licenses or other agreements, associated with the Third Party Products, in addition to the terms and restrictions

contained in this Agreement. Do not install, access, or use such Third-Party Products if you do not accept their terms. If Third-Party Products include open source software, Customer may have the right to receive source code for such software; a copy of such source code may be obtained free of charge by contacting Motorola.

9. **Compliance with Laws.** You will ensure your use of the Services and Software (as applicable) complies with all foreign, federal, state and local laws, rules and regulations applicable laws applicable to your use. By accessing or using the Services, you warrant that you have obtained all necessary rights and permissions required for your use of the Services. Motorola may, at its discretion, cease providing or otherwise modify the Services or Software in order to comply with any changes in applicable law. You will ensure that you have all necessary rights and permissions to use any Customer Data that you submit to or otherwise use in connection with the Services.
10. **Export Control.** You may not (and your Authorized Users may not) access or use the Software or Services in any jurisdiction in which the provision of such Software and Services is prohibited under applicable laws or regulations (a “**Prohibited Jurisdiction**”), and you will not provide access to the Software or Services to any government, entity, or individual located in a Prohibited Jurisdiction. You represent and warrant that (a) you and your Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) you and your Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) you will not permit your Authorized Users to access or use the Software or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) you and your Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which you, your employees, and your Authorized Users are located.
11. **Term and Termination.** This Agreement will commence on (a) the date you first access or use the Service; or (b) thirty (30) days from the date of initial invoice for the Services, whichever occurs earlier (the “Effective Date”) and will remain in effect for the term set forth in the Order (the “Initial Term”). Unless sooner terminated in accordance with the provisions of this Agreement, your subscription shall continue to renew for the same length as the Initial Term (each a “Renewal Term” and together with the Initial Term, the “Term”) unless and until either party provides at least thirty (30) days written notice to the other of their intent to terminate at the end of the Term. Either Party may terminate the Agreement on written notice if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Motorola may terminate any Service, in whole or in part, in the event Motorola plans to cease offering the applicable Service to customers. Upon termination of this Agreement for any reason, your use of and access to the Services will automatically terminate. YOUR PURCHASE IS FINAL. IF YOU CANCEL YOU WILL NOT RECEIVE A REFUND OF OR CREDIT FOR ANY PORTION OF THE FEES PAID FOR THE THEN CURRENT SERVICES PERIOD. If Motorola terminates your Services, Motorola will refund any payment you have already remitted to Motorola for such Services. Without limiting the foregoing, you may cancel your Services at any time, but such cancellation will be effective at the end of the Term. You will be responsible for all Fees (plus any applicable taxes and other charges) incurred until expiration of the Term. If you cancel, your right to use the Services will continue until the end of the Term and will then terminate without further charges, unless otherwise instructed by you to terminate sooner. Upon termination of this Agreement, Motorola will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession in accordance with the [Privacy Statement](#).
12. **Suspension.** Motorola may suspend your access to or use of the Service, in whole or in part, immediately and without notice to you, if Motorola determines that (a) you are in breach of this Agreement; (b) any amounts owed by you remain past due; (c) your or your Authorized Users’

access or use of the Service poses a security or other risk or adverse impact to the Service, to Motorola or Motorola's systems, or to any third party (including other Motorola customers); or (d) your agreement with a reseller for the Services terminates or expires.

13. **Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, you and your Authorized Users will stop use of the Services and return or destroy (at Motorola's option) all Motorola Confidential Information in their possession or control and, as applicable, provide proof of such destruction. If you have any outstanding payment obligations under this Agreement under an Order, Motorola may accelerate and declare all such obligations of yours immediately due and payable by you. Notwithstanding the reason for termination or expiration, you must pay Motorola or Motorola's reseller, as applicable, for Services already delivered. You have a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and your termination of this Agreement.
14. **Fees & Taxes.** Unless otherwise agreed by Motorola, you will pay Motorola's reseller any fees specified for Services in accordance with the applicable Order (the "**Fees**"). Fees are due within thirty (30) days of the invoice date, or as otherwise specified in the Order. Late payments will be subject to interest charges at the rate of 1.5% per month or maximum rate permitted by law, whichever is less. To the extent permitted by applicable law, your Order is noncancelable and the sums paid nonrefundable, except as otherwise provided in this Agreement or your Order. Unless otherwise set forth in an applicable Order, any renewal of the Services will be at the then-applicable list price. You acknowledge and agree that a purchase order or other notice to proceed is not required for payment for Services. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by you, except as exempt by law, unless otherwise specified in an Order. If Motorola is required to pay any Taxes, you will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after your receipt of an invoice therefore. Motorola will be solely responsible for reporting taxes on its income and net worth. You will pay all court costs, fees, expenses, and reasonable attorneys' fees incurred by Motorola in collecting delinquent Fees. If you purchase Services from an entity that ceases to be an authorized Motorola reseller, then Motorola may notify you and may either refer you to another reseller or may charge you for access to and use of the Service pursuant to this Agreement.
15. **Customer-Provided Equipment.** Certain components, including equipment and software, not provided by Motorola may be required for use of the Software and Services ("**Customer-Provided Equipment**"). You will be responsible, at your sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. You represent and warrant that you have all rights in Customer-Provided Equipment to provide the Software and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). You (and not Motorola) will be fully liable for Customer-Provided Equipment, and you will immediately notify Motorola of any Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Software and Services under this Agreement.
16. **LIMITED WARRANTY; DISCLAIMER.** Motorola warrants that the Services will perform substantially in conformance with its Documentation throughout the Term. Except to the extent prohibited by applicable law, Motorola's sole obligation and your sole and exclusive remedy for breach of the foregoing warranty shall be that Motorola will use commercially reasonable efforts to correct the non-conforming Service functionality without charge. Motorola shall not be liable for warranty nonconformance caused by use or combination with hardware and software not provided by Motorola, misuse of the Service, or your negligence or willful misconduct. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICES, BETA SERVICES, SOFTWARE, THIRD-PARTY SOFTWARE AND ANY DATA, INFORMATION OR RESULTS OBTAINED THROUGH THE SERVICES ARE PROVIDED ON AN "AS AVAILABLE," "AS IS" BASIS AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT



ARE THE COMPLETE WARRANTIES FOR THE SOFTWARE AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE SOFTWARE AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET YOUR PARTICULAR REQUIREMENTS.

17. **Indemnification by Motorola.** Motorola will defend any third-party claim brought against you alleging that the Services (the “**Infringing Product**”) directly infringe a United States patent or copyright (“**Infringement Claim**”), and Motorola will pay all damages finally awarded by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola’s duties under this section are conditioned upon: (a) you promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) you cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim. If an Infringement Claim occurs, or in Motorola’s opinion is likely to occur, Motorola may at its option and expense: (a) procure for you the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant you a pro-rated refund of any amounts pre-paid for the Infringing Product. In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend any Infringement Claim that arises from or is based upon or arises out of the following (“**Excluded Claims**”): (a) Customer Data, Customer-Provided Equipment, non-Motorola content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Services with any products or materials not provided by Motorola; (c) any Service designed, modified, or manufactured in accordance with your designs, specifications, guidelines or instructions; (d) a modification of the Service by a party other than Motorola; (e) use of the Service in a manner for Service was not designed or that is inconsistent with the terms of this Agreement; or (f) your failure to use or install an update to any Software or Services that is intended to correct the claimed infringement. In no event will Motorola’s liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from you from sales or license of the Infringing Product. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE PROVISIONS OF THIS SECTION STATE THE SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITY OF MOTOROLA FOR ANY INFRINGEMENT CLAIM. FOR CLARITY, 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.
18. **Indemnification by You.** You will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Excluded Claims; (b) your failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola in connection with the Services; (c) your (or your service providers, agents, employees, or Authorized User’s) negligence or willful misconduct; and (d) any breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola’s use of Customer-Provided Equipment, Customer Data, or non-Motorola content in violation of the Agreement. Motorola will give you prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with you in its defense or settlement of the claim.
19. **Limitation of Liability.** You acknowledge and agree that any agreement with a reseller sets forth your remedies in the event you or any of your Authorized Users or other third party

experiences any damages or losses arising from or in connection with the Software and Services or any other products or services provided by Motorola or the reseller, and therefore you should look solely to such reseller (and not to Motorola) for recourse for such losses or damages and for any other claims or remedies. Without limiting the foregoing, you further agree that Motorola's liability with respect to the Software and Services and this Agreement is limited as set forth in this Section. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "MOTOROLA PARTIES") WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR, ANY (A) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES; (B) LOST PROFITS, REVENUES, CUSTOMER OPPORTUNITIES, BUSINESS, ANTICIPATED SAVINGS, OR GOODWILL; AND (C) BUSINESS INTERRUPTION. THE TOTAL AGGREGATE LIABILITY OF THE MOTOROLA PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE TOTAL FEES PAID FOR THE SERVICE TO WHICH THE CLAIM IS RELATED DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE. THE FOREGOING LIMITATION APPLIES EVEN IF MOTOROLA HAS BEEN ADVISED BY YOU OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-MOTOROLA CONTENT, CUSTOMER'S SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF THE SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING, RANSOMWARE, OR OTHER THIRD-PARTY ATTACKS OR DEMANDS; (D) MODIFICATION OF SERVICES BY ANY PERSON OTHER THAN MOTOROLA; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; (G) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (H) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (I) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (J) TRACKING AND LOCATION-BASED SERVICES; (K) BETA SERVICES; OR (L) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE SERVICES.

20. **Confidentiality.** "Confidential Information" means any and all non-public information provided by one Party ("Discloser") to the other ("Recipient") that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable business person would consider non-public and confidential by its nature. During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this Section; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly-owned subsidiary, a parent company, any other wholly owned subsidiaries of the same

parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement. Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

21. **Data.** You acknowledge and consent to Motorola's collection, processing, and use of the Customer Data as described in this Section.

1. **Data Security.** Motorola is committed to protecting the security and integrity of the Customer Data. Motorola will maintain an information security program that is proportionate to the multiple and diverse risks associated with networked technologies.
2. **Customer Data.** You own all right, title and interest in and to the Customer Data. You grant to Motorola and its affiliates and subcontractors a non-exclusive, worldwide, sublicensable, perpetual, paid-up right and license to use the Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by Motorola) to (a) perform, provide, maintain and protect the Services under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve Motorola products and services, and (c) create new products and services. You will secure and maintain all legally required consents and rights and have provided all legally required notices to provide the Customer Data to Motorola. You are solely responsible for all Customer Data including the creation or maintaining of backups and copies of all Customer Data and the accuracy, integrity, quality, legality, and appropriateness of the Customer Data. Motorola does not make any representations and warranties with respect to the Customer Data. "Customer Data" means data you or anyone acting on your behalf, runs on the Services, causes to interact with the Services or submits through the use of the Services.
3. **De-Identified Data.** Notwithstanding the other terms in this Agreement, Motorola may use or disclose De-Identified Data for any purpose. "De-Identified Data" means Customer Data that does not identify you directly or by inference.
4. **Aggregated Statistics.** Motorola may monitor your use of the Services to gather data and information related to your use of the Services and/or information compiled from Customer Data that Motorola may use in an aggregate and anonymized manner (collectively, the "Aggregated Statistics"), for one or more of the following purposes: (i) to compile statistical and performance information related to the provision and operation of the Services; (ii) to provide routine or subscriber-requested maintenance, repairs, analytical or diagnostic services related to the Services; (iii) to ensure compliance with, or provide updates or revisions to, this Agreement or the Services, and policies and protocols related thereto; or (iv) to compile analytical and statistical information for purposes of developing and improving our products and services.
5. **Location of Data.** Customer Data may be transferred to or stored and/or processed in the United States or other countries in which Motorola or its affiliates or subcontractors operate. Motorola will act in accordance with the requirements of this Agreement regardless of where Motorola stores or processes the Customer Data.
6. **Legal Purpose Disclosure.** Notwithstanding the other terms of this Section, Motorola may use or disclose Customer Data as Motorola believes in good faith to be necessary or appropriate: (i) under applicable law, including laws outside your country of residence;

- (ii) to comply with legal process; (iii) to respond to lawful requests from public or government authorities; and (iv) to enforce this Agreement or allow Motorola to pursue available remedies or limit the damages that Motorola may sustain.
7. **Personal Information.** Motorola is dedicated to safeguarding personal information and processing it in a manner consistent with user expectations. The data processing addendum at <https://www.avigilon.com/global-data-processing-agreement> (the “DPA”) is incorporated by reference herein and will apply to the extent any Customer Data is Personal Data (as defined in the DPA). In regards to other Personal Data, if any, Motorola will comply with the Privacy Statement at <https://www.avigilon.com/about/privacy> as may be updated from time to time.
22. **Intellectual Property Ownership; Feedback.** As between you and Motorola, (a) Motorola owns all right, title, and interest, including all intellectual property rights, in and to the Software and Services and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. If you or any of your employees, contractors, or agents send or transmit any communications or materials to Motorola suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or including any comments, questions, suggestions, or the like (“Feedback”), Motorola is free to use such Feedback irrespective of any other obligation or limitation between you and Motorola governing such Feedback. All Feedback is and will be treated as non-confidential. You hereby assign to Motorola on your behalf, and shall cause your representatives to assign to us on their behalf, all right, title, and interest in any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, without any attribution or compensation to you, your representatives, or any third party. The Parties agree that, notwithstanding any provision of this agreement to the contrary, all fixes, modifications and improvements to the Services conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. All trademarks, logos, and service marks (“Marks”) displayed on the Services are the property of Motorola or of their respective owners. You are not permitted to use any of the Marks without the applicable prior written consent of Motorola or such respective owners.
23. **Force Majeure.** Except for payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.
24. **Governing Law; Dispute Resolution.** All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless the customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a “Dispute”). Either Party may initiate Dispute resolution procedures by sending a notice of Dispute to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute. If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation to the other Party. The Parties will choose an independent mediator within thirty (30) days of such notice of mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will

be represented at the mediation by a business executive with authority to settle the Dispute. All in person meetings under this Section will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with Section 24(a) below.

1. **Litigation, Venue.** If the Dispute has not been resolved by mediation within sixty (60) days from the notice of mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.
2. **Equitable Remedy.** You acknowledge that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Services Documentation, and that your breach of the Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If you breach this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).
3. **Bar on Claims.** You may not bring any claims against a Motorola Party in connection with this Agreement or the Software and Services more than one (1) year after the date of accrual of the cause of action.

## 25. General.

1. **Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.
2. **Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.
3. **Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.
4. **Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the Software or Services will be a direct and intended third-party beneficiary of this Agreement.
5. **Interpretation.** The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.
6. **Notices.** Motorola may need to communicate with you from time to time regarding this Agreement or the Services. Motorola may provide such notice to you via email to the email address you provided to Motorola, or through the user interface for the Services, or

on the site on which this Agreement is posted. Copies of any legal notices should be sent to Motorola Solutions, Inc., 600 W. Monroe St., Chicago, IL 60661 USA; Attn: Legal Department.

7. **Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.
8. **Survival.** The following Sections will survive the expiration or termination of this Agreement for any reason: 9, 10, 11, 13, 16 – 25.
9. **Entire Agreement; Electronic Acceptance.** This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements and understandings, whether written or oral, relating to this subject matter. This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent), and your acceptance will be deemed binding between the parties. Neither party may contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted or signed in electronic form. Electronically maintained records, when produced in hard copy form, shall constitute business records and shall have the same validity as any other generally recognized business records.
10. **Change to this Agreement.** Except to the extent prohibited by applicable laws, Motorola may modify this Agreement by posting a revised version on the site where the applicable Agreement terms are posted, via the Services, by email to the email address associated with your account, or any means permitted under this Agreement. Any changes to this Agreement will be effective upon posting (or such later effective date as may be indicated at the top of the revised Agreement terms). You should ensure that you have read and agree with our most recent Agreement when you use the Service. If you do not agree to the Agreement as amended, you must stop using the Services and cancel your account. Your continued use of the Services after the date the amended Agreement is posted will constitute your acceptance of the amended Agreement.

## Exhibit A

Motorola Proposal dated 11/5/24

## Exhibit B

### Additional Florida Terms

**1. Indemnification.** Nothing contained herein is intended nor may it be construed, to waive Customer's rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time; nor will anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement. To the extent considered necessary by the Contract Administrator and the Customer Attorney, any sums due Motorola under this Agreement may be retained by the Customer until all of the Customer's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld is not subject to payment of interest by the Customer. The above provisions will survive the termination or expiration of this Agreement and will pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

**2. Sovereign Immunity.** Nothing contained in this Agreement or Agreement is intended to nor shall it be construed as an additional waiver of sovereign immunity by the Customer beyond the Customer's expressed written contractual obligations contained within this contract, nor shall it be construed as a waiver of any defenses or limitations to any claims, including those based on the doctrine of sovereign immunity or section 768.28, Florida Statutes.

**3. Public Records Compliance.** Motorola agrees that, to the extent that it may "act on behalf" of the Customer within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

(a) Keep and maintain public records required by the public agency to perform the service.

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, subject to applicable law and ethical rules, Motorola shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Motorola keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided

to the public agency, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.

(e) **Pursuant to Section 119.0701(2)(a), Fla. Stat., IF MOTOROLA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MOTOROLA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 630-4922, AKARMERIS@SDSINC.ORG, 2501A Burns Road, PALM BEACH GARDENS, FLORIDA 33410..**

**4. Public Records Compliance Indemnification.** Motorola authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Motorola in Collier County Circuit Court on an expedited basis to enforce the requirements of this section.

**5. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by the Customer specified in the Agreement shall not be construed as a waiver of Customer's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Customer in the Agreement in derogation hereof shall be void and of no force or effect.

**6. Non-appropriation.** In the event funds are not appropriated in any fiscal year for payments due under this agreement, then the Contractor shall be notified as soon as is practical by memorandum from the District Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated notwithstanding any automatic renewal as may be provided in the Agreement. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the District, subject to the District paying all invoices for services rendered during the period the Agreement was funded by an appropriation. Notwithstanding the above, the Customer will pay Motorola for all conforming services rendered, and equipment or parts provided, up to the date of termination.

**7. E-Verify Compliance.** By entering into this Agreement, Motorola is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Motorola attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Motorola agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Motorola will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Motorola affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Motorola is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Motorola requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Motorola is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

**8. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or



entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria.

Accordingly, Motorola hereby certifies that Motorola is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Motorola further hereby certifies that Motorola is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Motorola understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Motorola to civil penalties, attorney's fees, and/or costs. Motorola further understands that any contract with Customer for goods or services of any amount may be terminated at the option of Customer if Motorola (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Customer if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria. Notwithstanding the above, Motorola has business operations in Sudan and Syria in the form of support for various United Nations missions. This support is only provided after approval from the US Government in the form of an export license from the US Department of Commerce.

**9. Public Entities Crime or Convicted Vendor List.** The Contract has a continuous duty to disclose to the District if the Motorola or any of its affiliates as defined by Section 287.133(1) (a), Florida Statutes are placed on the convicted vendor list or the Antitrust Violator Vendor List.

**10. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the Parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Collier County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

**11. [Intentionally Omitted]**

**12. Data Management; Notice of Breach.** Motorola shall cooperate with state and local government obligations by assisting with timely incident reporting, response activities/fact gathering, public and agency notification requirements, severity level assessment, after-action reports as provided in Section 282.3185 (5) & (6), Florida Statutes.

**13. Environmental and Social Government and Corporate Activism.** Motorola is prohibited from giving preference to any subcontractor based on the subcontractor's social, political or ideological interests as mandated in Section 287.05701, Florida Statutes.

**AGREEMENT REGARDING COLLIER COUNTY SHERIFF'S OFFICE**  
**VIDEO ACCESS FOR PARTICIPATION**  
**IN THE VIDEO PROGRAM**

THIS AGREEMENT regarding Collier County Sheriff's Office Video Access for Participation in the Video Program (hereinafter "Agreement"), is hereby entered into between The Sheriff of Collier County, a constitutional officer of the State of Florida (hereinafter "**SHERIFF**"), and Ave Maria Stewardship Community District, a special-purpose unit of local government created and existing pursuant to Chapter 2004-461, Laws of Florida, as amended, with a mailing address of 2501A Burns Road, Palm Beach Gardens, Florida 33410 (hereinafter "Participant" or "District" and together with Sheriff, "Parties" or individually "Party").

NOW THEREFORE, the Parties to this Agreement agree as follows:

**ARTICLE I**  
**RESPONSIBILITIES OF PARTICIPANT**

- 1.0 Participant hereby grants the **SHERIFF** access to designated video cameras owned and/or operated by Participant. Such video cameras shall be designated by separate letter from Participant and may be updated from time to time.
- 1.1 Participant consents and understands that recording from designated video sources may be used in intelligence gathering and criminal investigations to include in the prosecution of such cases, subject to Section 119.071(3) of the Florida Statutes.
- 1.2 Participant agrees to allow the **SHERIFF** to install necessary equipment on Participant's network that would allow **SHERIFF** to use Participant's camera network at no cost to transmit the designated video sources.
- 1.3 Participant agrees to return to the **SHERIFF** any owned equipment installed or in the possession of the Participant upon termination of this Agreement. If such equipment is lost or damaged, Participant agrees to reimburse the **SHERIFF** for the replacement cost.
- 1.4 Participant warrants and affirms that they have the authority and/or permission to enter into this Agreement and to allow the **SHERIFF** access to the designated video camera recording and video streams.
- 1.5 Participant acknowledges and agrees that the **SHERIFF** may monitor Participant's video

cameras and recordings so long as access of any security system plan or information is consistent with the requirements of Section 119.071(3)(a)3., Florida Statutes, which renders such information confidential and exempt from public records disclosure and may be disclosed only consistent with such section. The **SHERIFF** agrees that any monitoring of Participant's video cameras and recordings will be in furtherance of its official duties and responsibilities.

**SHERIFF** acknowledges and agrees that any and all access pursuant to this Agreement will be in accordance with Florida's Public Records Laws, including but not limited to Chapter 119, Florida Statutes. Participant further acknowledges and agrees that entering into this Agreement does not ensure or guarantee that the **SHERIFF** will monitor Participant's video cameras at any particular time, in real-time, during emergencies, or upon request.

- 1.6 Participant acknowledges and agrees that video recordings obtained as a result of Participant's participation in the **SHERIFF** video program, if any, may become part of a criminal investigation and/or prosecution and may be subject to Florida's Public Records Laws or other legal requirements.
- 1.7 Participant will provide the **SHERIFF** at least one point of contact with a basic understanding of Participant's video cameras and their locations. Participant's point of contact shall be the District Manager.
- 1.8 Participant will provide any information needed by the **SHERIFF** to participate in the video program, including but not limited to: camera brand, camera model, IP address, and camera or associated DVR/NVR login information.

## **ARTICLE II RESPONSIBILITIES OF THE SHERIFF**

- 2.0 The **SHERIFF** does not and will not have any ownership interest in the video cameras designated for inclusion in this Agreement by Participant.
- 2.1 The **SHERIFF** will access only video cameras designated by Participant pursuant to this Agreement for inclusion in the **SHERIFF's** video program.
- 2.2 Subject to any applicable laws, used in criminal prosecutions, court orders, or other legal requirements, the **SHERIFF** may share Participant's video recording with members of the public but only in accordance with Section 119.071(3)(a)3., Florida Statutes, or other applicable law that may allow such access by the public.
- 2.3 The **SHERIFF** will ensure that any employee with access to Participant's video camera

system will be trained on system use and security of access.

- 2.4 The **SHERIFF** will ensure that access to Participant's video cameras is strictly limited to personnel responsible for monitoring the system, and authorized logins will be tracked, and such access shall only occur in furtherance of the official duties and responsibilities of the **SHERIFF**.
- 2.5 Video cameras that are subject to this Agreement will be reviewed and approved by the **SHERIFF** as meeting all technological requirements, being appropriate for sharing with the **SHERIFF**, and must be deemed useful to promote enhanced situational awareness and safety. **SHERIFF** acknowledges and agrees that the District does not guarantee its camera system meets all technical requirements, and the District shall not be obligated to upgrade any portion of its camera system.
- 2.6 **SHERIFF** understands and agrees that any and all security footage provided pursuant to this Agreement is subject to provisions of Florida's Public Records Laws. Among other requirements imposed by the Florida's Public Records Laws, **SHERIFF** shall ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the **SHERIFF** does not transfer the records to the District and upon completion of the contract, transfer to the District, at no cost, all public records in **SHERIFF**'s possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred, **SHERIFF** shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

### ARTICLE III

#### TERMS AND TERMINATION

- 3.0 This Agreement shall take effect upon signing by both Parties and shall remain in effect for a period of five (5) years from that date unless terminated earlier, superseded by a different agreement, or invalidated due to a change in local, state, or federal law.
- 3.1 This Agreement may be renewed by mutual written agreement by both parties.
- 3.2 The Participant, at his/her discretion, may terminate the video feed at any time. If the video feed is terminated, the Participant shall notify the **SHERIFF** within 24 hours.
- 3.3 This Agreement may be terminated by either Party at any time and for any reason by giving the other Party fourteen (14) days written notice delivered to the point of contact designated herein.

- 3.4 Neither Party may assign or transfer all or any portion of this Agreement without the prior written consent of the other Party.

#### **ARTICLE IV**

#### **MISCELLANEOUS PROVISIONS**

- 4.0 The purpose of this Agreement is to assist the Parties and provide a written agreement of their intentions stated in good faith and with as much accuracy as possible. Neither Party has the authorization or right to delegate, subcontract, or bind any other person or entity to any obligation arising hereunder without that other person or entity's express written consent as well as the other Party's express written consent.
- 4.1 This Agreement does not create a legal relationship, joint venture, partnership, employer/employee relationship, agent relationship, independent contractor relationship, or any other type of relationship between the Parties.
- 4.2 In no event will either Party be liable to the other for any indirect, incidental, special, exemplary, punitive, or consequential damages of any kind, including but not limited to lost revenues, profits, or goodwill, for any matter arising out of or in connection with the performance or nonperformance of this Agreement. Participant agrees to defend the **SHERIFF**, its agents, servants, employees, and officers against any and all demands, claims, assertions of liability, or actions arising or alleged to have arising out of any act or omission by Participant, their relatives, agents, servants, and employees, and to indemnify and hold the **SHERIFF** harmless for any claims or damages sustained as a result of any act or omission by Participant related to their participation in this Agreement.
- 4.3 The **SHERIFF**, the Sheriffs successors, representatives, assigns, employees, and any other persons associated with the **SHERIFF**, do not waive and hereby invoke any and all applicable limitations on liability, including but not limited to, Florida Statute §768.28, or the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq.
- 4.4 Nothing in this Agreement shall be deemed as a waiver of the District's sovereign immunity or the District's limits of liability as set forth in Section 768.28, Florida Statutes, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.
- 4.5 This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall

accrue upon or by reason, to or for the benefit of any third party not a formal Party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors, and assigns.

- 4.6 This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida. All actions and disputes shall be brought in the proper court and venue, which shall be Collier County, Florida.
- 4.7 All notices, requests, consents and other communications under this Agreement ("Notice" or "Notices") shall be in writing and shall be electronically mailed and hand delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the Parties, at the addresses first noted above.
- 4.8 This Agreement embodies the entire and complete understanding and agreement between the Parties and no amendments or modifications thereto are effective unless signed by both Parties.

[Signatures Appear on Following Page]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the final date below written.

On Behalf of the SHERIFF:

Participant:

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

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

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

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

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

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

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

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

**To:** Board of Supervisors

**From:** Allyson Holland, P.E., District Manager

**Date:** November 25, 2024

**Board Meeting Date:** December 3, 2024

---

**SUBJECT**

Consider Approval of Contract with Trebilcock Consulting Solutions, PA to provide Transportation Professional Services to the Ave Maria Stewardship Community District.

**STAFF RECOMMENDATION**

Staff recommends Approval of Contract with Trebilcock Consulting Solutions, PA to provide Transportation Professional Services to the Ave Maria Stewardship Community District.

**GENERAL INFORMATION**

The Ave Maria Stewardship Community District (District) has worked with Trebilcock Consulting Solutions, PA (TCS) for many years to provide transportation consulting services. This proposal includes evaluating traffic speeds and providing updated traffic monitoring information. Also included is a 4-way stop sign warrant analysis at Avila Avenue and Taylor Road, as directed by the Board of Supervisors earlier this year. The total contract price is \$24,220.00.

**PROCUREMENT REVIEW**

The contract is under \$35,000 for an engineering planning or study so below the section 287.055, Florida Statutes, competitive procurement requirements.

**DISTRICT ENGINEER REVIEW**

The District Engineer has reviewed and approved the attached proposal.

**DISTRICT LEGAL COUNSEL REVIEW**

The District Legal Counsel has reviewed and approved the attached proposal for legal form and sufficiency.

**FUNDING REVIEW**

Sufficient funding for transportation professional services is available in the adopted FY 2024-2025 Budget.

Attachments





November 25, 2024

Edward F. Tryka III, PE  
AMSCD District Engineer  
c/o LJA Engineering, Inc.  
7400 Trail Boulevard, Suite 200  
Naples, FL 34108  
O 239.597.3111 | M 239.825.1183  
E [etryka@lja.com](mailto:etryka@lja.com)

**Subject: AMSCD Area Traffic Counts and Stop Sign Warrant Analysis, Ave Maria, Collier County, FL  
Transportation Consulting Professional Services Agreement**

Dear Mr. Tryka:

Trebilcock Consulting Solutions, PA (TCS) is pleased to submit a proposal to provide Transportation Consulting Professional Services to conduct areawide traffic counts and provide a stop sign warrant analysis at Avila Avenue and Taylor Road, within the Ave Maria community, in Collier County, Florida.

Please review the attached Scope of Services and Fee Schedule outlining the tasks that will be performed for the subject project. Also included are TCS' Standard Business Terms & Conditions and Standard Rate Code.

Thank you for the opportunity to provide our services on your project.

Sincerely,

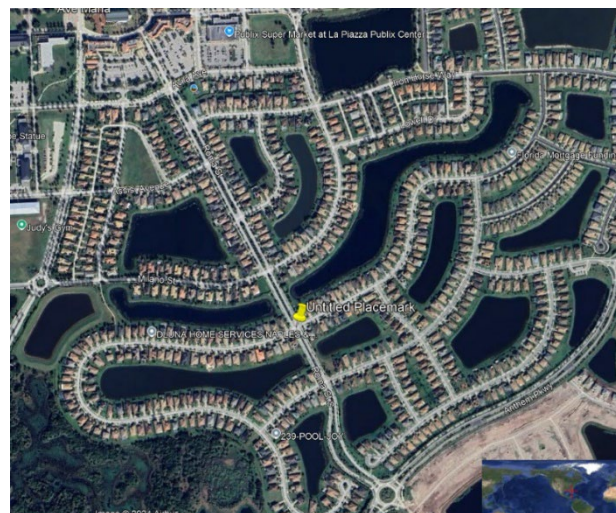
**Trebilcock Consulting Solutions, PA**

A handwritten signature in blue ink, appearing to read "Norman J. Trebilcock", is written over a light blue grid background.

Norman J. Trebilcock, AICP, PTOE, PE  
President

## **PROJECT INFORMATION AND ASSUMPTIONS**

- Trebilcock Consulting Solutions, PA (TCS) will evaluate traffic speeds and provide traffic monitoring information for 12 street locations affecting the roadway system within the Ave Maria Stewardship Community District (AMSCD).
- Existing and proposed roadway information will be provided by Peninsula Engineering.
- TCS will perform a 4-way stop sign warrant analysis at Avila Avenue and Taylor Road, to determine if this intersection warrants a 4-way stop. The intersection was previously a 4-way stop, but this was removed in 2022 and put in further down Avila, at its intersection with Roma Street.
- Specific concerns regarding the Avila/Taylor intersection include:
  - curve/parked cars making the intersection difficult to see from Avila Avenue.
  - drivers remembering the former 4-way stop at the intersection and often still braking or slowing down at the intersection.
  - children riding bikes who often do not stop on Taylor Road before entering Avila Avenue.
- Existing and proposed roadway information will be provided by LJA.
- Client to provide a copy of all relevant permits, reports, approvals, and other related documents for the Project.



## **SCOPE OF SERVICES**

### **1. Traffic Counts**

- A. Conduct a 3-day traffic count (Tuesday, Wednesday, and Thursday) to collect volume and speed for 12 street locations affecting the District roadway system.
- B. Traffic counts will be conducted by a qualified sub-consultant (no-mark-up).

### **2. Traffic Count Report**

- A. Evaluate collected traffic volume data.
- B. Prepare a report of findings based on the traffic volume data collected.
- C. Coordinate with and assist the project team and/or county staff regarding transportation elements of the project.

### **3. Speed Evaluation Report (Contingent)**

- A. Review community traffic and roadway data to determine suitability of current traffic speeds.
- B. Prepare a traffic report of findings based on consideration of the speed, volume and character of motor vehicles using the streets.
- C. Prepare and submit support documents regarding project transportation issues based on requests for additional information by project team or agency staff, as applicable.
- D. Coordinate with and assist the project team and/or county staff regarding transportation elements of the project.

#### 4. 4-Way Stop Warrant Traffic Counts

- A. Conduct turning movement counts at the intersections, to capture approach volumes (pedestrian, bicyclists and vehicles) for a 12-hour period of 2 weekdays (Tuesday, Wednesday or Thursday).
- B. Traffic counts may be conducted by a qualified sub-consultant (no mark-up).

#### 5. 4-Way Stop Warrant Analysis

- A. Evaluate collected traffic volume data.
- B. Prepare a 4-way stop warrant analysis in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) standards.
- C. The analysis will provide recommendations for intersection control.
- D. Coordinate with and assist in submitting the warrant analyses report to Collier County.

#### 6. 4-Way Stop Warrant Analysis Follow Up

- A. Respond to Collier County staff review comments, as needed, and prepare and submit support documents regarding project transportation issues based on requests for additional information by agency staff.
- B. Coordinate with project team and agency staff regarding transportation issues that require resolution.

#### **PROFESSIONAL SERVICE FEES**

- 1. **Reimbursable Expenses** are billed as T/M/E (Time and Materials Estimate). Expenses for blueprints, reproduction services, overnight delivery, courier service, and other project related charges will be billed at cost plus 10%.
- 2. **Retainer/Payment.** The client will pay a retainer to Consultant for the Services in the amount of \$ N/A. This fee shall be payable upon contract signing (invoice will be provided). Client shall pay additional fees, if any, upon presentation of a billing statement by Consultant, and the retainer will be applied to project final billing.
- 3. **Scope of Services** will be provided based on the following fee structure:

TASK	SCOPE OF SERVICES	FEE TYPE	FEE
1	Traffic Counts (No mark-up)	LS	\$ 5,920.00
2	Traffic Count Report	LS	\$ 3,500.00
3	Speed Evaluation Report (Contingent)	LS	\$ 6,000.00
4	4-Way Stop Warrant Traffic Counts (No Mark-up)	LS	\$ 2,200.00
5	4-Way Stop Warrant Analysis	LS	\$ 5,000.00
6	4-Way Stop Warrant Analysis Follow Up	TME	\$ 1,500.00
	Professional Service Fees – Reimbursable Expenses	TME	\$ 100.00
<b>Total</b>			<b>\$ 24,220.00</b>

LS = Lump Sum (Fixed); TME = Time and Materials Estimate

### **EXCLUDED SERVICES**

The professional services to be provided by Trebilcock Consulting Solutions are limited to those described in the Scope of Services. All other services are specifically excluded, including, but not limited to the following items:

- Construction Phase Services
- Environmental Services
- Final Design Roadway Improvement Services
- Geotechnical Engineering Services
- Hydrogeological Services
- Land Surveying Services
- Off-site Street Lighting or Roadway Improvement Services
- Parking Needs Services
- Permitting Services
- Public Hearing Attendance
- Site Design Services
- Site Lighting Design Services
- Structural Engineering Services

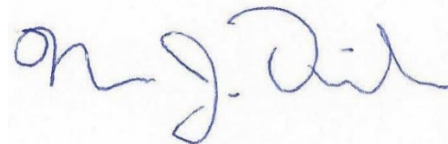
### **PROFESSIONAL SERVICES AGREEMENT AUTHORIZATION**

This is to certify that all parties to the Agreement have accepted the Scope of Services, Standard Business Terms and Conditions, and Standard Rate Code described herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the last date shown below.

**AVE MARIA STEWARDSHIP COMMUNITY  
DISTRICT**

**TREBILCOCK CONSULTING SOLUTIONS, PA**



\_\_\_\_\_  
Edward F. Tryka III, PE, District Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Norman J. Trebilcock

11/25/2024

\_\_\_\_\_  
Date

## REQUIRED BILLING INFORMATION

Please fill in the information below to ensure invoicing accuracy. **Note:** Invoices will be emailed to the email address provided under **Accounts Payable Information**, unless otherwise requested.

INVOICE ADDRESSEE INFORMATION		ACCOUNTS PAYABLE INFORMATION	
Company		Contact	
Contact		Phone No.	
Street Address		Fax No.	
City, State, Zip		Email Address	
Phone No.			
Fax. No.			
Email Address			

## **TREBILCOCK CONSULTING SOLUTIONS, PA**

### **STANDARD BUSINESS TERMS & CONDITIONS**

These Standard Business Terms & Conditions are attached to, and made part of, the Proposals and Agreements between Trebilcock Consulting Solutions, P.A. (TCS) and Client.

#### **I. Limitation of Liability**

Trebilcock Consulting Solutions' (TCS) services under this Agreement will be consistent with the Standard of Care for all professional engineering and related services to be performed or furnished by TCS. These engineering services shall be provided with the care and skill ordinarily provided by members of the Engineering Profession practicing under similar circumstances. Upon notice to TCS and by mutual Agreement between the parties, TCS will correct those services not meeting such a standard without additional compensation.

TCS and Client recognize that the project involves risk. The risks have been allocated such that the Client agrees to the fullest extent permitted by the law, TCS' total liability to Client for any and all injuries, claims, losses, expenses, damages, reasonable attorney's fees, and defense costs, arising out of or in any way connected to this project and/or Agreement from any cause or causes, shall not exceed the amount of the fee charged for the specific service described. Such causes may include, but are not limited to, TCS' negligence, errors, omissions, strict liability, breach of contract or breach of warranty. **INDIVIDUAL EMPLOYEES, OR AGENTS OF TREBILCOCK CONSULTING SOLUTIONS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

#### **II. Payments and Collection**

Invoicing may be provided monthly, and statements are due and payable upon receipt, unless otherwise agreed in writing. Client agrees to carefully read all billing statements and promptly notify TCS, in writing, of any claimed errors or discrepancies, within fifteen (15) days from the date of the statement. If TCS is not notified by the Client in writing, it is presumed that owner agrees with the correctness, accuracy, and fairness of the billing statement.

Past due amounts may incur a late fee of 1% compounded monthly and TCS can, upon giving seven (7) days written notice to Client, suspend services until payment in full is received. Client's failure to make payment to us within 30 days shall constitute a material breach of this Agreement and shall be cause for termination by TCS. Retainers shall be credited on the final invoice. TCS is entitled to collect reasonable fees and costs, including collection agency, attorney's fees and interest as required to obtain collection of any fees under the Agreement.

#### **III. Reimbursable Expenses**

Expenses for reproduction services, courier fees, delivery, presentation materials, long distance phone calls, travel made on behalf of the project, subcontractors/sub-consultant fees, and any other out-of-pocket expenses incurred on the project are reimbursable to TCS. These expenses will be billed to the Client at cost plus 10%.

#### **IV. Permit and Application Fees**

Client shall pay all permit and application fees required for the project.

#### **V. Termination**

This Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Irrespective of which party shall affect termination, the Client shall pay TCS for all services rendered to the date of termination.

#### **VI. Attorney Fees**

Should litigation arise related to services under this Agreement, the prevailing party is entitled to recover reasonable costs including staff time, court costs, attorney fees and related expenses.

#### **VII. Mediation**

TCS and Client agree that all disputes or claims between them arising out of or relating to this Agreement made during design, construction, or post-construction of the project shall be submitted to nonbonding mediation unless the parties agree otherwise.

#### **VIII. Ownership of Documents**

All documents, including electronic media, prepared by TCS under this Agreement shall remain the property of TCS.

#### **IX. Delays**

TCS is not responsible for delays caused by factors beyond TCS' control including, but not limited to, the production of contract documents; issuance of permits from any government or agency; beginning or completion of construction; or performance of any phase of the work pursuant to this Agreement. TCS does not guarantee issuance of any permit.

#### **X. Force Majeure**

If performance of services under this Agreement is affected by causes beyond the reasonable control of TCS, project schedule and compensation shall be equitably adjusted.

#### **XI. Changes**

Client may make or approve changes within the general Scope of this Agreement. If such changes affect TCS' cost or time required for performance of the services, an equitable adjustment will be made through a written amendment to this Agreement.

#### **XII. Severability and Survival**

If any term and condition contained in this Agreement are held illegal, invalid, or unenforceable, the other terms and conditions shall remain in full effect. Limitations of Liability shall survive termination of this Agreement for any cause.

#### **XIII. No Third-Party Beneficiaries**

This Agreement gives no rights or benefits to anyone other than Client and TCS and has no third-party beneficiaries except as provided in Para. XII.

#### **XIV. Assignments**

Neither party shall have the power to or will assign any of the duties or rights of any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.



**TREBILCOCK CONSULTING SOLUTIONS, PA**  
**STANDARD RATE CODE**

**Effective July 10, 2024**

CLASSIFICATION	CODE	HOURLY RATE
<b>PROFESSIONAL CONSULTANT</b>		
Professional Consultant 1	PC1	\$130
Professional Consultant 2	PC2	\$150
Professional Consultant 3	PC3	\$165
Professional Consultant 4	PC4	\$180
Professional Consultant 5	PC5	\$195
Professional Consultant 6	PC6	\$210
<b>ADMINISTRATIVE</b>		
Administrative Assistant 1	AA1	\$95
Administrative Assistant 2	AA2	\$105
<ul style="list-style-type: none"> <li>• Reimbursable and Sub-consultant Expenses may be charged at Cost plus 10%.</li> <li>• Expert Witness/Public Hearing Attendance may be charged at 150% of Standard Rate Code Fees.</li> <li>• Any State of Florida Services Tax will be added to our fees, as may be applicable.</li> </ul>		

**Ave Maria Stewardship Community District**  
**Budget vs. Actual**  
**October 2024**

	<b>Oct 24</b>	<b>24/25 Budget</b>	<b>\$ Over Budget</b>	<b>% of Budget</b>
<b>Expenditures</b>				
01-1130 · Payroll Tax Expense	0.00	734.00	-734.00	0.0%
01-1131 · Supervisor Fees	0.00	9,600.00	-9,600.00	0.0%
01-1310 · Engineering	0.00	90,000.00	-90,000.00	0.0%
01-1311 · Management Fees	5,833.33	70,000.00	-64,166.67	8.33%
01-1314 · District Manager - on site	23,333.33	280,000.00	-256,666.67	8.33%
01-1313 · Website Management	208.33	2,500.00	-2,291.67	8.33%
01-1315 · Legal Fees	0.00	100,000.00	-100,000.00	0.0%
01-1320 · Audit Fees	0.00	18,300.00	-18,300.00	0.0%
01-1330 · Arbitrage Rebate Fee	0.00	3,900.00	-3,900.00	0.0%
01-1440 · Rents & Leases	0.00	1,000.00	-1,000.00	0.0%
01-1441 · Travel & Lodging	881.51	10,000.00	-9,118.49	8.82%
01-1450 · Insurance	101,655.00	120,000.00	-18,345.00	84.71%
01-1480 · Legal Advertisements	0.00	8,000.00	-8,000.00	0.0%
01-1512 · Miscellaneous	0.00	10,000.00	-10,000.00	0.0%
01-1513 · Postage and Delivery	3.54	3,000.00	-2,996.46	0.12%
01-1514 · Office Supplies	352.00	3,500.00	-3,148.00	10.06%
01-1540 · Dues, License & Subscriptions	175.00	500.00	-325.00	35.0%
01-1541 · Misc Filing, Notices, etc.	0.00	500.00	-500.00	0.0%
01-1733 · Trustee Fees	0.00	40,000.00	-40,000.00	0.0%
01-1734 · Continuing Disclosure Fee	0.00	12,000.00	-12,000.00	0.0%
01-1735 · Assessment Roll	0.00	25,000.00	-25,000.00	0.0%
01-1808 · Irrigation Repair	0.00	205,000.00	-205,000.00	0.0%
01-1813 · Storm Cleanup - Electric	0.00	26,250.00	-26,250.00	0.0%
01-1814 · Storm Cleanup	0.00	60,000.00	-60,000.00	0.0%
01-1815 · Miscellaneous Maintenance	6,539.60	75,000.00	-68,460.40	8.72%
01-1816 · Electric-Streetlights,Landscape	11,926.85	150,000.00	-138,073.15	7.95%
01-1817 · Maintenance Street Sweeping	0.00	30,000.00	-30,000.00	0.0%
01-1818 · Striping & Traffic Markings	0.00	250,000.00	-250,000.00	0.0%
01-1819 · Street Light Maintenance	4,295.00	140,000.00	-135,705.00	3.07%



**Ave Maria Stewardship Community District**  
**Budget vs. Actual**  
**October 2024**

	<b>Oct 24</b>	<b>24/25 Budget</b>	<b>\$ Over Budget</b>	<b>% of Budget</b>
01-1820 · Maint Sidewalk/Curb Repairs	0.00	200,000.00	-200,000.00	0.0%
01-1830 · Maintenance Contracts	63,468.50	729,793.00	-666,324.50	8.7%
01-1831 · Tree Trimming	0.00	160,000.00	-160,000.00	0.0%
01-1832 · Storm Cleanup - Landscaping	15,212.50	26,250.00	-11,037.50	57.95%
01-1833 · Plant Replacement	29,282.20	200,000.00	-170,717.80	14.64%
01-1834 · Mulch	0.00	150,000.00	-150,000.00	0.0%
01-1839 · Entry Feature/Near Well Water	839.05	5,500.00	-4,660.95	15.26%
01-1841 · Maintenance Irrigation Water	5,560.75	93,713.00	-88,152.25	5.93%
01-1842 · Maint Fountain/Repair	1,587.11	50,000.00	-48,412.89	3.17%
01-1843 · Maintenance Rodent Control	6,875.00	25,000.00	-18,125.00	27.5%
01-1844 · Maint Equipment Repair	122.85	8,400.00	-8,277.15	1.46%
01-1845 · Maint Signage Repair	22,895.00	20,000.00	2,895.00	114.48%
01-1846 · Maint Storm Drain Cleaning	3,185.00	52,500.00	-49,315.00	6.07%
01-1847 · Mnt Drainage/Lke Mnt/Littorals	15,239.00	81,113.00	-65,874.00	18.79%
01-1848 · Maintenance Aerators	0.00	2,100.00	-2,100.00	0.0%
01-1850 · Maint-Preserve Maintenance	13,503.00	64,890.00	-51,387.00	20.81%
01-1853 · Maintenance Small Tools	373.96	7,500.00	-7,126.04	4.99%
01-1854 · Maint Miscellaneous Repairs	250.00	30,000.00	-29,750.00	0.83%
01-1855 · Maint Vehicle Lease/Fuel/Repair	0.00	35,000.00	-35,000.00	0.0%
01-1863 · Maint Base Management Fee	1,920.00	23,000.00	-21,080.00	8.35%
01-1867 · Asset Management & Software	0.00	139,000.00	-139,000.00	0.0%
01-1869 · Operations Team Salaries	36,666.67	462,000.00	-425,333.33	7.94%
01-1871 · Verizon - Internet	175.36	0.00	175.36	100.0%
01-1872 · Pressure Washing	1,885.00	60,000.00	-58,115.00	3.14%
01-1890 · Maint-Reserve Fund	0.00	27,500.00	-27,500.00	0.0%
01-1891 · Maint Contingency	11,750.00	15,000.00	-3,250.00	78.33%
01-1892 · Public Safety Projects	0.00	250,000.00	-250,000.00	0.0%
01-1893 · Capital Asset Purchase	0.00	110,000.00	-110,000.00	0.0%
<b>Total Expenditures</b>	<b>385,994.44</b>	<b>4,773,043.00</b>	<b>-4,387,048.56</b>	<b>8.09%</b>