



City of Charlotte

Charlotte-Mecklenburg
Government Center
600 East 4th Street
Charlotte, NC 28202

Agenda Date: 12/10/2018

Agenda #: 47.File #: 15-9450 Type: Consent Item

Cisco Products and Services**Action:**

- A. Approve contracts with the following companies for Cisco products and services for an initial term of five years:**
- **CDWG,**
 - **DISYS,**
 - **Softchoice, and**
- B. Authorize the City Manager to renew the contracts for up to two, one-year terms with possible price adjustments and to amend the contracts consistent with the purpose for which the contracts were approved.**

Staff Resource(s):

Robert Campbell, Finance

Kay Elmore, Finance

Brad Dunkle, Innovation and Technology

Explanation

- Cisco products are used throughout the City's technology network infrastructure to connect users to applications and services in support of operations, including 911, 311, traffic controls, and environmental building contracts.
- The following categories of Cisco products and services will be available through these contracts:
 - Networking software;
 - Routers, mobile vehicle routers, switches, and wireless products;
 - Professional services;
 - Unified communications and data center application services; and
 - Maintenance and support.
- On August 21, 2018, the City issued a Request for Proposals (RFP) on behalf of the Charlotte Cooperative Purchasing Alliance; seven proposals were received.
- CDWG, DISYS, and Softchoice best meet the City's needs in terms of qualifications, experience, cost, and responsiveness to RFP requirements.
- Multiple awards are recommended to ensure alternative solutions, flexibility, and availability in the provision of the services/commodities to best fit the needs of each department, support 24/7 or multi-shift operational needs, and provide adequate coverage.
- The vendors are offering the City discounts for the various products and services provided in these contracts.
- Annual expenditures across all contracts are estimated to be \$3,750,000.

Charlotte Business INclusion

The City will negotiate MWSBE subcontracting participation based on each project awarded (Part C: Section 2.1. (h) of the Charlotte Business INclusion Policy).

Fiscal Note

Agenda #: 47.**File #:** 15-9450 **Type:** Consent Item

Funding: Various department operating budgets

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE
CISCO PRODUCTS AND SERVICES**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this 12th day of June 2019 (the "Effective Date"), by and between CDW LLC, a Illinois limited liability corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # 269-2018-058) for Cisco Products and Services dated August 21, 2018. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

WHEREAS, the City desires that the Company provide certain Cisco Products and Services ("Services"), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. With the exception of Exhibit E (Cloud Technology Requirements) and Exhibit H (Federal Contract Terms and Conditions), any conflict between language in an Exhibit or Appendix to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Notwithstanding anything contained in this Contract or any Exhibit to the contrary, in the event of a conflict between the language of Exhibit E or Exhibit H and the main body of this Contract or any other Exhibit to this Contract, the language of Exhibit E and Exhibit H shall prevail; provided also that Exhibit H shall prevail over Exhibit E.] Each reference to CDW LLC. in the Exhibits and Appendices shall be deemed to mean the Company.

- EXHIBIT A: PRICE SCHEDULE
- EXHIBIT B: SCOPE OF WORK
- EXHIBIT C: MAINTENANCE SERVICES
- EXHIBIT D: LICENSE
- EXHIBIT E: CLOUD TECHNOLOGY REQUIREMENTS
- EXHIBIT F: CURRENT CITY STANDARDS FOR PRODUCTS AND SERVICES
- EXHIBIT G: MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASE AGREEMENT
- EXHIBIT H: FEDERAL CONTRACT TERMS AND CONDITIONS

2. DEFINITIONS. The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

- 2.1. *ACCEPTANCE* - Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.

- 2.2. *ADMINISTRATIVE FEE* - Refers to a fee paid to the City for all purchases made by Participating Public Agencies per Exhibit A, Section x.
- 2.3. *AFFILIATES* - Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs services.
- 2.4. *BIODEGRADABLE* - Refers to the ability of an item to be decomposed by bacteria or other living organisms.
- 2.5. *CCPA* - Refers to the Charlotte Cooperative Purchasing Alliance.
- 2.6. *CITY* - Refers to the City of Charlotte, North Carolina.
- 2.7. *CITY PROJECT MANAGER* - Refers to a specified City employee representing the City's best interests in this Project.
- 2.8. *COMPANY* - Refers to CDW LLC.
- 2.9. *COMPANY PROJECT MANAGER* - Refers to a specified Company employee representing the best interests of the Company for this Project.
- 2.10. *CONTRACT* - Refers to a written agreement executed by the City and Company for all or part of the Services.
- 2.11. *DELIVERABLES* - Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with this Contract.
- 2.12. *DEPARTMENT* - Refers to a department within the City of Charlotte.
- 2.13. *DOCUMENTATION* - Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
- 2.14. *ENVIRONMENTALLY PREFERABLE PRODUCTS* - Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serves the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
- 2.15. *PARTICIPATING PUBLIC AGENCY* - Refers to a public entity, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization.
- 2.16. *RECYCLABILITY* - Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
- 2.17. *RECYCLED MATERIAL* - Refers to material and by-products which have been recovered or diverted from solid waste for the purpose of recycling. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- 2.18. *SERVICES* - Refers to the Cisco Products and Services as requested in this Contract.
- 2.19. *SMARTnet SERVICE* - Refers to extended warranty coverage and operating system updates and support available through Cisco.

- 2.20. *SPECIFICATIONS AND REQUIREMENTS* - Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this Contract including any Exhibits; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- 2.21. *TRADE SECRETS* - Information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. See N.C. Gen. Stat. § 66-152 et seq. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 2.22. *WORK PRODUCT* - Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3. DESCRIPTION OF SERVICES.

The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit B.

4. COMPENSATION.

- 4.1. **TOTAL FEES AND CHARGES.** The City agrees to pay the Company at the rates indicated in Exhibit A, which shall remain firm for the duration of the Contract.
- 4.2. **EXPENSES.** The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.
- 4.3. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.
- 4.4. **INVOICES.** Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include an invoice number and the City purchase order number for purchases made under this Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.
- The Company shall email all invoices to cocap@charlottenc.gov.
- 4.5. **DUE DATE OF INVOICES.** Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.
- 4.6. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.
- 4.7. **AUDIT.** During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations.

- The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **RECORDS.** The Company shall be responsible for keeping a record that accurately states the type of Service performed or Products provided. The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under this Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of this Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, whenever requested by the City.
 6. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit B, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
 7. **NON-APPROPRIATION OF FUNDS.** If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
 8. **COMPANY PROJECT MANAGER.** The duties of the Company Project Manager include, but are not limited to:
 - 8.1. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - 8.2. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
 - 8.3. Communication among and between the City and the Company's staff;
 - 8.4. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
 - 8.5. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
 - 8.6. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
 9. **CITY PROJECT MANAGER.** The duties of the City Project Manager are to (i) ensure that the Company delivers all requirements and specifications in the Contract; (ii) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (iii) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (iv) act as the City's point of contact for all aspects of the Services including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business day's notice to the Company.
 10. **DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.** The Company shall identify and request in writing from the City in a timely manner:
 - (i) all information reasonably required by the Company to perform each task comprising the Services,
 - (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to

perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit B specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.

The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors.

12. BACKGROUND CHECKS. Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check must include: (i) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (ii) a reference check.

After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.

If a person's duties under this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- If the job duties require driving: A motor vehicle records check.
- If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

13. ACCEPTANCE OF TASKS AND DELIVERABLES. Within a reasonable time after a particular Deliverable has been completed (or such specific time as may be set forth in Exhibit B), the Company

shall submit a written notice to the City's Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s).

If, after five (5) business days, the City Project Manager determines s/he is not satisfied that the Deliverable(s) has been met, a notice of rejection (a "Rejection Notice") shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Company shall: (i) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (ii) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the "Certification"). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work. If the City Project Manager does not send a Rejection Notice within the timeframe provided herein, the Deliverables shall be deemed accepted.

Upon receipt of the corrected Deliverable(s), or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

14. **NON-EXCLUSIVITY.** The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any particular project.
15. **EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.** Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
16. **REPRESENTATIONS AND WARRANTIES OF COMPANY.**
 - 16.1. **GENERAL WARRANTIES.**
 - 16.1.1. The Services shall satisfy all requirements set forth in this Contract, including but not limited to the attached Exhibits;
 - 16.1.2. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under this Contract by virtue of interruptions in the computer systems used by the Company;
 - 16.1.3. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
 - 16.1.4. Neither the Services nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
 - 16.1.5. The Company and each Company employee provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit B;
 - 16.1.6. All information provided by the Company about each Company employee is accurate; and
 - 16.1.7. Each Company employee is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such employees.

- 16.2. ADDITIONAL WARRANTIES. The Company further represents and warrants that:
- 16.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
 - 16.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - 16.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
 - 16.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - 16.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
 - 16.2.6. The performance of this Contract by the Company and each Company employee provided by the Company will not violate any contracts or agreements with third parties or any third-party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

17. OTHER OBLIGATIONS OF THE COMPANY.

- 17.1. WORK ON CITY'S PREMISES. The Company and all its employees will, whenever on the City's premises, obey all instructions and City policies that are provided with respect to performing Services on the City's premises.
- 17.2. RESPECTFUL AND COURTEOUS BEHAVIOR. The Company shall assure that its employees interact with City employees and the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.
- 17.3. REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES. In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 17.4. REGENERATION OF LOST OR DAMAGED DATA. With respect to any data that the Company or any Company employees have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.
- 17.5. E-VERIFY. The Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 17.6. NC PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL. Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Company further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any

and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Company appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

18. REMEDIES.

- 18.1. RESERVED.
- 18.2. RIGHT TO WITHHOLD PAYMENT. If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.
- 18.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF. The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.
- 18.4. SETOFF. Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.
- 18.5. OTHER REMEDIES. Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

19. TERM AND TERMINATION OF CONTRACT.

- 19.1. TERM. This Contract shall commence on the Effective Date and shall continue in effect for five (5) years with the City having the unilateral right to renew for two (2) consecutive one (1) year terms.
- 19.2. TERMINATION FOR CONVENIENCE. The City may terminate this Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, the Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered through the termination date and the percentage of completion of each task.
- 19.3. TERMINATION FOR DEFAULT BY EITHER PARTY. By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
 - a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
 - b. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
 - c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a

petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

- 19.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
 - b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, the Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or
 - c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 19.5. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 19.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.** In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall, upon termination, immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.
- 19.7. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (i) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (ii) the Department Director of the City Department responsible for administering this Contract.
- 19.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that are owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential

- Information,” as defined in this Contract.
- 19.9. **NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.** Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 19.10. **OTHER REMEDIES.** The remedies set forth in this Section and Section 18 shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

20. TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the “Transition Services”). Transition Services may include but shall not be limited to the following:

- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;
- Performing the Transition Services;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

21. CHANGES. In the event changes to the Services (collectively “Changes”), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties that expressly references and is attached to this Contract (a “Change Statement”). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Charlotte City Council.

22. CITY OWNERSHIP OF WORK PRODUCT.

22.1. The parties agree that the Company shall grant the City a non-transferable, non-exclusive, royalty-free license to use all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”).

- 22.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City's prior written consent, and shall treat the Intellectual Property as "Confidential Information" pursuant to Section 26 of the Contract.
- 22.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

23. RELATIONSHIP OF THE PARTIES. The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Company employee an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

24. INDEMNIFICATION. To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City, any federal agency that funds all or part of this Contract, and each of the City's and such federal agency's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 24 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

25. SUBCONTRACTING. Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third-

party beneficiary.

26. CONFIDENTIAL INFORMATION.

26.1. CONFIDENTIAL INFORMATION. Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

- 26.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 26.1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*
- 26.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 26.1.4. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 26.1.5. *Citizen or employee social security numbers collected by the City.*
- 26.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 26.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 26.1.8. *Any attorney / City privileged information disclosed by either party.*
- 26.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 26.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 26.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 26.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 26.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 26.1.3 through 26.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed

- within one (1) year prior to the date of this Contract.
- 26.2. RESTRICTIONS. The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 26.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
 - 26.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
 - 26.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
 - 26.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
 - 26.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
 - 26.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
 - 26.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 26.3. EXCEPTIONS. The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
- 26.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
 - 26.3.2. Was or becomes publicly known through no wrongful act of the Company;
 - 26.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
 - 26.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
 - 26.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
 - 26.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.
- 26.4. UNINTENTIONAL DISCLOSURE. Notwithstanding anything contained herein in to the

- contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 26.5. **REMEDIES.** The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

27. INSURANCE.

- 27.1. **TYPES OF INSURANCE.** The Company shall obtain and maintain during the life of this Contract, with an insurance company rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:
- 27.1.1. **Automobile Liability - Bodily injury and property damage liability** covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 27.1.2. **Commercial General Liability - Bodily injury and property damage liability** as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.
- 27.1.3. **Errors and Omissions Liability – Insurance** as shall protect the Company and its employees from claims alleging the failure to provide the services required by this Contract. This policy shall be specific to the performance of this Contract and shall provide limits of \$1,000,000 each occurrence/aggregate.
- 27.1.4. **Electronic Errors and Omissions –** If the risk typically covered by Electronic Errors and Omissions Insurance are not covered by the Company's Errors and Omissions Insurance, the Company shall purchase an electronic errors and omissions insurance policy having aggregate limits of \$1,000,000 and occurrence limits of \$750,000 respectively.
- 27.1.5. **Workers' Compensation and Employers Liability -** meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

27.2. OTHER INSURANCE REQUIREMENTS.

- 27.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such

insurance.

- 27.2.2. The City of Charlotte shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.
- 27.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.
- 27.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.
- 27.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.
- 28. COMMERCIAL NON-DISCRIMINATION.** As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.
- As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.
- The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time
- The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.
- 29. NOTICES AND PRINCIPAL CONTACTS.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by

overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the Company:

CDW Government LLC
Attn: General Counsel
230 N. Milwaukee Avenue
Vernon Hills, IL 60061

PHONE: 800-838-4239

E-MAIL: psp@cdw.com

For the City:

Kay Elmore
City of Charlotte
Procurement Management Division
600 East Fourth Street, CMGC 9th Floor
Charlotte, NC 28202-2850

PHONE: 704-336-2524

FAX: 704-632-8252

kelfmore@charlottenc.gov

With Copy To (Company):

CDW Government LLC
Attn: Program Sales
2 Corporate Drive
Suite 800
Shelton, CT 06484

PHONE: 800-838-4239

EMAIL: psp@cdw.com

With Copy To (City):

Adam Jones
City of Charlotte
City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202

PHONE: 704-336-8158

amjones@charlottenc.gov

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

30. MISCELLANEOUS.

- 30.1. ENTIRE AGREEMENT. This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 30.2. AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 30.3. GOVERNING LAW AND JURISDICTION. The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 30.4. BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 30.5. CITY NOT LIABLE FOR DELAYS. It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages

- or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.
- 30.6. **FORCE MAJEURE.**
- 30.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 30.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 30.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.
- 30.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 30.7. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 30.8. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.
- 30.9. **APPROVALS.** All approvals or consents required under this Contract must be in writing.
- 30.10. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 30.11. **SURVIVAL OF PROVISIONS.** The following sections of this Contract shall survive the termination hereof:
- Section 4.3 "Employment Taxes and Employee Benefits"
Section 16 "Representations and Warranties of Company"
Section 19 "Term and Termination of Contract"

- Section 22 "City Ownership of Work Product"
Section 24 "Indemnification"
Section 26 "Confidential Information"
Section 27 "Insurance"
Section 29 "Notices and Principal Contacts"
Section 30 "Miscellaneous"
- 30.12. **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 30.13. **DRAFTER'S PROTECTION.** Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 30.14. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.
- 30.15. **CONFLICT OF INTEREST.** The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 30.16. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 30.17. **HARASSMENT.** The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 30.18. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the foregoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.
- 30.19. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of

- the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 30.20. COUNTERPARTS. This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- 30.21. PRE-AUDIT. No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate.”

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed as of the date first written above.

CDW LLC.

BY: Brian Fisher
(signature)

PRINT NAME: Brian Fisher

TITLE: Manager Program Manager

DATE: 6/1/2019

**CITY OF CHARLOTTE:
INSURANCE AND RISK MANAGEMENT**

BY: Christee Gibson
(signature)

PRINT NAME: Christee Gibson

TITLE: Ins. Mgr

**CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE**

BY: Sabrina Joy Hogg
(signature)

PRINT NAME: Sabrina Joy Hogg

TITLE: Deputy City Manager

DATE: 6/1/19

EXHIBIT A

PRICE SCHEDULE

This Price Schedule is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and CDW LLC. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in this Contract.

The Company shall offer the below indicated discount off their current costs for the following Categories.

1. Products

Category	% off Cisco List Price	Comments
Networking Software	40.76%	
Network Management and Automation	40.76%	
Network Optimization and Acceleration	40.76%	
Optical Networking	40.76%	
Routers	40.76%	
Switches	40.76%	
Wireless	40.76%	
Mobile vehicle routers	40.76%	
Unified Communications	40.76%	
Maintenance and Support	12%	For Cisco Smartnet
Maintenance and Support	20.76%	For anything outside of Smartnet and Professional Services

2. Professional Services Hourly Service Rates

Type of Service	Hourly Fee
Design & Analysis Remote	\$210
Design & Analysis Onsite	\$235
Configuration Remote	\$210
Configuration Onsite	\$235
Implementation Remote	\$210
Implementation Onsite	\$235
Installation Remote	\$210
Installation Onsite	\$235
Training Remote	\$210
Training Onsite	\$235

Maintenance Remote	\$210
Maintenance Onsite	\$235
Project Management Onsite	\$200
Project Management Remote	\$175

3. Administrative Fees:

The Company shall pay the City the quarterly Administrative Fee of based on of overall CCPA Program spend by the City and Participating Public Agencies during the term of the Contract listed below. The Administrative Fee shall be paid no later than 30 days after both parties mutually agree to the quarterly report outlining the CCPA spend.

1.25%

4. Pricing Incentives and Rebates:

The Company shall offer the following incentives and rebates listed below based on volume, dollar amounts, core credits or other criteria below:

Rebate Description	Amount or Percentage
Not to exceed program. Company shall work with the City to identify opportunities for deeper discounts and offerings for specific projects including larger roll outs.	TBD

EXHIBIT B

SCOPE OF WORK

This Scope of Work is an Exhibit to and is incorporated into the Services Contract between the City of Charlotte and CDW LLC. (the "Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in this Contract.

1. General Scope.

The City and Participating Public Agencies require Cisco Data Communications products and services. While the Participating Public Agencies are flexible with respect to certain elements of the Cisco Products and Services, the following specific requirements and preferences apply.

2. Certifications and Qualifications.

The Company shall have a Cisco Gold Level certification and maintain on staff, the minimum of twelve (12) unique Cisco certified employees, including a minimum of two (2) Cisco Certified Internetwork Experts (CCIE). A letter from Cisco must state that the Company is certified to sell, install and maintain Cisco products, and has Cisco Gold Level Certification. The Company is required to have the following Cisco Certifications:

- Cisco Advanced Enterprise Networks Architecture Specialization;
- Cisco Advanced Security Architecture Specialization; and
- Cisco Advanced Data Center Architecture Specialization.

The Company must be authorized to sell and/or install the following technologies:

- Enterprise Networks;
- Cisco Wireless;
- Collaboration and conferencing;
- Unified Contact Center Enterprise;
- Security;
- Optical Networking;
- Data Center; and
- Internet of Things (IOT)

The Company shall provide a single point of contact as a dedicated account representative for the City and acknowledge any reported issues within one business day of receiving notification from the City.

3. Optional or Additional Services.

The Company shall provide formal quotes for additional services requested by the City, which fall outside the scope of the Contract, such as hosting services.

4. Equipment.

All equipment, products and components furnished under this Contract shall be new, meet all requirements of the Specifications, operate in full compliance with these Specifications and must be procured from an authorized Cisco channel source.

5. Quantities.

Participating Public Agencies reserve the right to purchase according to actual need and do not guarantee quantities. Multiple orders will be placed on an as needed basis during the term of the Contract.

6. Environmental Purchasing Requirements.

The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. Companies must provide certification of environmental standards and other environmental claims, such as recycled content and emissions data or a formal statement signed by a senior company official. Products shall include the following environmental attributes wherever possible or appropriate:

- Recycled content packaging
- Reduced Packaging

- Energy efficiency
- Life Cycle Management
- End of life management

7. Reporting Requirements.

7.1. CCPA Quarterly Reports.

The Company shall provide a quarterly usage report electronically to Procurement Management no later than the 30th day of January, April, July, and October. The report shall clearly identify all items purchased by the City and any Participating Public Agency, purchase order number, purchase order date, category name, Product description and part/product number, quantity, list price, percentage discount, unit price, and extended price for all Products and Services purchased under the Contract.

7.2. Environmental Reporting.

The Company shall provide quarterly reports on all Products and Services purchased by the City or any other requesting Participating Public Agency on any item with an environmental element as described above. Such reports shall be emailed to environmentalreporting@charlottenc.gov.

EXHIBIT C
MAINTENANCE SERVICES

The Company shall use commercially reasonable efforts to facilitate the procurement of maintenance Services with its Product manufacturers. Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

EXHIBIT D
LICENSE

The City or Participating Public Agency shall negotiate licensing terms with the applicable licensor, cloud service provider or other third party licensor at the time of purchase when applicable. Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

EXHIBIT E

City of Charlotte Cloud Technology Requirements

The Company and the City or Participating Public Agency shall execute Company's standard Cloud Services Order form as the time of purchase, when applicable. In the event of any conflict between any terms stated in such Cloud Services Order form and this Contract, the terms of the Contract will prevail. Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. The Parties agree that in the event that the City or a Participating Public Agency purchases Cloud Services from the Company, the following terms shall exclusively govern such purchases.

1. Cloud Services

The City acknowledges that it is receiving cloud Services directly from the Cloud Service Provider pursuant to the Cloud Service Provider's standard terms and conditions or such other terms as agreed upon by the City and the Cloud Service Provider ("Cloud Services Terms and Conditions"). Accordingly, the City shall consider the Cloud Service Provider to be the contracting party and the Cloud Service Provider shall be the party responsible for providing the Cloud Services to the City and the City will look solely to the Cloud Service Provider for any loss, claims or damages arising from or related to the provision of such Cloud Services.

2. Warranties

The City acknowledges that Company is not the provider of the Cloud Services purchased by the City hereunder and the only warranties offered are those of the Cloud Service Provider, not Company. In purchasing the Cloud Services, the City relies on the Cloud Service Provider's service descriptions and the terms and conditions set forth in the Cloud Services Terms and Conditions only.

The City further acknowledges and agrees that Company makes no representations, warranties or assurances that the Cloud Services are designed for or suitable for use in any high risk environment, including but not limited to aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems, and the City shall indemnify, defend and hold Company, and its and their directors, officers, employees and agents harmless from any loss (of any kind), cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising from any such use of the Cloud Services. The City further agrees to review and comply with the Cloud Service Provider's disclaimers and restrictions, if any, regarding the use of the Cloud Services, in high risk environments.

SUBJECT TO APPLICABLE LAW, COMPANY MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF, OR RELATED TO, THE CLOUD SERVICES OR THE HARDWARE OR SOFTWARE USED TO DELIVER THE CLOUD SERVICES. FURTHERMORE, COMPANY DOES NOT WARRANT THAT THE CLOUD SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE CLOUD SERVICES WILL MEET THE CITY'S REQUIREMENTS. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY CLOUD SERVICE PROVIDER'S WARRANTY. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE TERMS OF THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY

WARRANTIES FROM THE CLOUD SERVICES PROVIDER. THE CITY ACKNOWLEDGES THAT NO REPRESENTATIVE OF COMPANY IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT IN THESE TERMS AND CONDITIONS.

The City shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. The City shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Cloud Services. COMPANY, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND THE CITY ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE CLOUD SERVICES.

3. Limitation of Liability

UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL EITHER PARTY OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY LOSS OF PROFITS, LOSS OF SALES OR TURNOVER, LOSS OR DAMAGE TO REPUTATION, BUSINESS, REVENUES OR SAVINGS, LOSS, DAMAGE OR CORRUPTION OF DATA OR SOFTWARE, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. THE ENTIRE LIABILITY OF EACH PARTY FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY THE CITY FOR THE CLOUD SERVICE(S).

EXHIBIT F - CURRENT CITY STANDARDS FOR PRODUCTS AND SERVICES

The City has a number of standards and preferences regarding implementation of new hardware and software. Proposed solutions must adhere to these in the cases where defined standards apply (noted next to the technology categories below) or where specific technology needs are noted in an RFP requirements section. In the remaining cases, adherence is preferred, but not required. Standards documentation for any technology category can be provided upon request. Implementation of any new hardware or software should require minimal changes to existing City systems. It is preferred that new software use architectures (e.g. database and reporting solutions) building upon or compliant with those already implemented at the City. Similarly, where System integration is required, new software installation should include the implementation of these interfaces and the Service Provider should identify means of minimizing any changes to the systems being interfaced with. The following table provides a summary of the City’s current technology environment.

Technology Category	Technical Architecture Summary
Telephony	
Telephony	AT&T Centrex Service / Avaya / Nortel
Call Recording System	NICE / Verint
Networking	
Network Hardware	Cisco, access should be secured by TACACS+ and SSH
Network Communication Protocol (<i>standards apply</i>)	IP, current protocol is IPv4, but new equipment should support IPv6
Wi-Fi	Wi-Fi enabled systems should support 80211a,b,g, and n protocols , AES 256 bit encryption, PEAP and MS-CHAPv2 authentication New Access point equipment should support Cisco LWAPP architecture
Data Center	
Server Hardware	HP Proliant series, Dell, Sun
Server Operating Systems	Windows Server 2008 and above, Red Hat 4 and above, Solaris 10 and above, HP-UX 11 and above
Virtual Operating Environments	Windows Virtual Server, VMWare, Microsoft App-V, Citrix
Storage	HP, Dell, Pillar & EMC SAN storage,
Backup Software	Symantec Netbackup 6.5, EMC Avamar 5
Backup Hardware	Oracle/SUN/Storagetek SL-500 library, Spectralogic T-50, HP ESL9326
Data	
Database Systems (<i>standards apply</i>)	Oracle Database Server 11g and above, MS SQL Server 2008 and above
ETL/Data Mapping Services/Data Warehousing	SQL Server Integration Services SQL Server Analysis Services, BizTalk 2009, Oracle Warehouse Builder (legacy only)
Business Intelligence / Data Visualization	Tableau, Excel

Reporting Services	Third-party products such as Business Objects / Crystal, COGNOS, Oracle Reports, and Microsoft SQL Reporting Services are supported for application-specific reporting. The City has a preference to utilize Microsoft SQL Reporting Services toolsets.
Application Servers	.NET Framework, Oracle WebLogic
Application	
Web Servers	Microsoft Internet Information Services v6 and above, Apache
Application Languages	MS VB.NET, ASP.NET, C#.NET, PL/SQL, JSP, Javascript, and Java J2EE are among the City's development toolsets in use.
Desktop Operating System	Windows XP and above
Application Client (<i>standards apply</i>)	Browser-based implementation is preferred. Client operating systems may include Windows XP and above. Browser clients should support Microsoft Internet Explorer Version 7 and above. If an actual client installation is required, it must be tested by the City to confirm that it does not conflict with other existing desktop components.
Portal Services	Microsoft Office SharePoint Services
GIS Platform (<i>standards apply</i>)	The City's Geospatial Platform is based on ESRI's ArcGIS technology. All spatial databases should be compatible with the City's implementation of the ESRI Geodatabase using ArcSDE. Web-based GIS tools, components or extended custom functionality should use ArcGIS Server.
E-mail Services (<i>standards apply</i>)	The City uses Microsoft Exchange with the Microsoft Outlook e-mail client.
Business Productivity (<i>standards apply</i>)	MS Office 2007
Data Protection	
Security	Security Access to the Software must be restricted by assigning user credentials to authorized users. Enterprise authentication services are provided by Active Directory.
Virus Protection	McAfee VirusScan 8.5

EXHIBIT G - MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Charlotte Cooperative Purchasing Alliance (CCPA) Master Intergovernmental Cooperative Purchasing Agreement will allow a Participating Public Agency to purchase commodities and/or services from any and all CCPA Contracts, under the same terms, conditions and prices as stated in each contract competitively solicited and awarded by the City of Charlotte, North Carolina ("Contracting Agent") on behalf of itself and all other public agencies. It is hereby agreed to by CCPA and the Participating Public Agency (Participants) that:

1. CPPA has followed procurement procedures for products and/or services offered by this Agreement in accordance with CCPAs governing procurement statutes and regulations.
2. The cooperative use of bids obtained by a party to this agreement shall be in accordance with the terms and conditions of the bid, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
3. It is the sole responsibility of each Participating Public Agency to follow their state procurement statutes as it pertains to cooperative purchasing, and the rules and regulations that govern each Participant's procurement practices.
4. CCPA cooperative purchasing contracts are available to Participating Public Agencies "as is," and CCPA is under no obligation to revise the terms, conditions, scope, price, and/or other conditions of the contract for the benefit of the Participants.
5. It is the sole responsibility of the Participating Public Agency to accept delivery of products and/or services, and the Participants hereby agree to make timely payments to each Company for products and/or services received pursuant to this Agreement. Any dispute which may arise between the Participating Public Agency and the Company are to be resolved between the Participating Public Agency and the Company.
6. The City of Charlotte shall not be held liable for any costs, damages, expenses, fees, or liabilities incurred by any other Participating Public Agency as a result of any contract or other arrangement entered into between that Participant and the Company.
7. The procuring party shall not use this agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
8. This Agreement incorporates all Contracts, covenants and understandings between CCPA and the Participating Public Agency. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed, or amended except by written revision or addendum executed by both parties.
9. This agreement is non-exclusive and shall not in any way preclude Participating Public Agencies from entering into similar agreements and/or arrangements with other Cooperative Purchasing Programs, or from acquiring similar goods and services from other sources.
10. This agreement shall take effect after the Participating Public Agency submits the competed electronic CCPA registration and shall remain in effect until termination by a party giving 30 days written notice to the other party.

EXHIBIT H
FEDERAL CONTRACT TERMS AND CONDITIONS

This Exhibit is attached and incorporated into the Cisco Products and Services Contract (the "Contract") between the City of Charlotte and CDW LLC. ("Company"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Exhibit and the terms of the main body of the Contract or any other exhibit or appendix, the terms of this Exhibit shall govern.

1. **Debarment and Suspension.** The Company represents and warrants that, as of the Effective Date of the Contract, neither the Company nor any subcontractor or subconsultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during the Contract term the Company or any subcontractor or subconsultant performing work at any tier is included on the federally debarred bidder's list, the Company shall notify the City immediately. The Company's completed Form 1 – Vendor Debarment Certification is incorporated herein as Form H.3 below.
2. **Record Retention.** The Company certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The Company further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three (3) years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
3. **Procurement of Recovered Materials.** The Company represents and warrants that in its performance under the Contract, the Company shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
4. **Clean Air Act and Federal Water Pollution Control Act.** The Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
5. **Energy Efficiency.** The Company certifies that the Company will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** The Company certifies that:
 - 6.1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Company, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension,

continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.

- 6.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Company shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
- 6.3. The Company shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 6.4. The Company's completed Form 1 –Byrd Anti-Lobbying Certification is incorporated herein as Form H.4 below.
7. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Company must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Company is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.
8. **Right to Inventions.** If the federal award is a "funding agreement" under 37 CFR 401.2 and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance or experimental, developmental or research work thereunder, the City must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
9. **DHS Seal, Logo, and Flags.** The Company shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Company, or any other party pertaining to any matter resulting from the Contract.

EXHIBIT H.1 – FTA FEDERAL CONTRACTING REQUIREMENTS

This Exhibit is incorporated into the Services Contract between the City of Charlotte and CDW LLC. (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or the “Company” shall be deemed to mean the Contractor.

The work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern this Contract, unless the Federal Government determines otherwise. This Exhibit identifies the Federal requirements that may be applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements contained in the most recent version of the Federal Transit Administration (“FTA”) Master Agreement, as amended (the “Master Agreement”), including any certifications and contractual provisions required by any Federal statutes or regulations referenced therein to be included in this Contract, are deemed incorporated into this Contract by reference and shall be incorporated into any subagreement or subcontract executed by the contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the Master Contract then in effect and with all applicable federal, state and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the work to be performed under this Contract.

1. **Access to Records and Reports.** Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

2. **Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Contract between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract. Notwithstanding, contractor shall be entitled to an adjustment in the maximum contract value and/or time on account of compliance with any such changes.
3. **No Government Obligation to Third Parties.** The City and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. **Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801, et seq. and U.S.DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5. **Privacy Act.** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
 - The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). The Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
6. **Civil Rights Requirements.** The following requirements apply to the underlying contract:
- a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. Patent and Rights in Data

- a. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

- Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- Data developed by the Purchaser or Contractor and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

- b. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:
 - General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

8. **Disadvantaged Business Enterprises.** This contract is subject to the requirements of 49 C.F.R., Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10 %). The agency's overall goal for participation is 0 %.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R., Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

If a separate contract goal has been established, use the following: Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.55. Award of this contract is conditioned upon the submission of the following: concurrent with and accompanying sealed bid or concurrent with and accompanying an initial proposal (prior to award):

- The names and addresses of DBE firms that will participate in this contract;
- A description of the work each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written documentation of the bidder commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts to do so.
- Bidders must present the information required above [as a matter of responsiveness] [with proposals] [prior to contract award] (see 49 C.F.R. 26.53 (3)).

If no separate contract goal has been established, use the following: The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from the City. In addition, [the Contractor may not hold retainage from its subcontractors] [is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the City and Contractor's receipt of the partial retainage payment related to the subcontractor's work.]

The contractor must promptly notify the City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

9. **Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

10. **Drug and Alcohol Testing.** To the extent Contractor or any of its subcontractors or their employees perform a safety-sensitive function under the Project, Contractor shall comply with and assure compliance by all subcontractors, if any, and their employees with 49 U.S.C. § 5331, and FTA Regulations entitled "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653 and "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.

11. **F.A.R. COMPLIANCE.** Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 C.F.R., Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

EXHIBIT H.2 – AVIATION FEDERAL REQUIREMENTS

This Exhibit is incorporated into the Services Contract between the City of Charlotte and CDW LLC. (the “Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or the “Company” shall be deemed to mean the Contractor.

1. **GENERAL CIVIL RIGHTS PROVISIONS.** The Company agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the companies from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases, the provision obligates the party or any transferee for the longer of the following periods:

- the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- the period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. **CIVIL RIGHTS – TITLE VI ASSURANCES.**

During the performance of this Contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees as follows:

1. **Compliance with Regulations:** The Company (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Company, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Company will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Company for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Company of the Company’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Company will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Company is

- in the exclusive possession of another who fails or refuses to furnish the information, the Company will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Company's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Company under the contract until the Company complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
 6. **Incorporation of Provisions:** The Company will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Company will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Company becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Company may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Company may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the "Company") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**EXHIBIT H.3
COMPANY DEBARMENT CERTIFICATION**

**REQUIRED FORM H – CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

**RFP # 269-2018-058
Cisco Products and Services**

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding a greater than 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:



Signature of Authorized Representative (Prime Contractor)

Print Name: Brian Fisher

Title: Manager, Program Management

Date: 9/26/18

I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]

Signature of Authorized Representative (Prime Contractor)

Print Name:

Title:

Date:

EXHIBIT H.4

COMPANY BYRD ANTI-LOBBYING CERTIFICATION

REQUIRED FORM 12 - BYRD ANTI-LOBBYING CERTIFICATION


RFP # 269-2018-060
Cisco Products and Services

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LL1, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CDW Government LLC (the "Company"), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Representative: 

Printed Name of Representative: Brian Fisher

Date: 9/16/18

Company Name: CDW Government LLC

Address: 230 N. Milwaukee Ave.

City/State/Zip: Vernon Hills, IL 60061-8740



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
04/05/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #	
INSURED CDW Corporation 200 North Milwaukee Avenue Vernon Hills IL 60061 USA	INSURER A: Travelers Property Cas Co of America		25674
	INSURER B: The Charter Oak Fire Insurance Company		25615
	INSURER C: The Phoenix Insurance Company		25623
	INSURER D: Lloyd's Syndicate No. 2623		AA1128623
	INSURER E:		
	INSURER F:		

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER: 570066079643** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			H6605D53096APHX16 see addendum	10/01/2018	11/01/2019	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA-5D57054A-16-TEC	10/01/2018	10/01/2019	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION			HSUMCUP5D53096ATIL1 SIR applies per policy terms & conditions	10/01/2018	10/01/2019	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
							Retained Limit	\$10,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			TC2JUB1117L61616 AOS TRJUB1116L66816 AZ, MA, WI	10/01/2018	10/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
A					10/01/2018	10/01/2019	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
D	E&O-MPL-Primary			W1 9A8C1 SIR applies per policy terms & conditions	10/01/2018	60201 10/01/2019	Aggregate SIR	\$5,000,000 \$500,000

Certificate No : 570066079643

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Contract No. 2017000829 City of Charlotte is included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER**CANCELLATION**

City of Charlotte North Carolina 600 E. 4th Street Charlotte NC 28202-2850 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED CDW Corporation	
POLICY NUMBER See Certificate Number: 570066079643			
CARRIER See Certificate Number: 570066079643	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

Commercial General Liability

Commercial General Liability
 Policy# H6605D53096APHX16
 State and Insurer(s) Affording Coverage
 California Travelers Property Casualty Company of America NAIC# 25674
 All Other The Phoenix Insurance Company NAIC# 25623