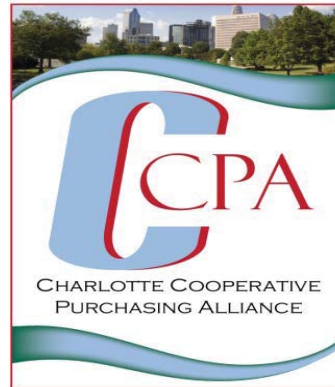


**REQUEST FOR PROPOSALS**  
**RADIOS AND COMMUNICATION EQUIPMENT**

**RFP # 269-2019-054**



**CITY OF CHARLOTTE**  
**NORTH CAROLINA**

**MARCH 19, 2019**

**REQUEST FOR PROPOSALS**  
**RFP # 269-2019-054**  
**RADIOS AND COMMUNICATION EQUIPMENT**

March 19, 2019

Dear Sir or Madam:

The City of Charlotte, on behalf of itself and all local government agencies and non-federal government agencies within Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia is accepting Proposals for Radios and Communication Equipment to satisfactorily support the City, and other public agencies supported under this contract. This Request for Proposals (the "RFP") issued on behalf of the Charlotte Cooperative Purchasing Alliance (CCPA) through group purchasing clause, which provides that any 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), state, other government agency or nonprofit organization may purchase Products and Services through this contract. Therefore, respondents to this RFP must give due consideration to the potential market. The requirements for submitting a Proposal are stated in the following RFP. Please review them carefully.

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **March 26, 2019 at 2:00 p.m.**, at the Charlotte-Mecklenburg Government Center (CMGC), 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986. Please bring a copy of the RFP with you at that time. All Companies should return a completed Request For Proposals Acknowledgement Form (see Section 6, Form One) by the date stated in the schedule in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting David Tate at [dtate@charlottenc.gov](mailto:dtate@charlottenc.gov).

All Proposals are due to City of Charlotte, Finance Department – City Procurement, 9th Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **April 16, 2019 at 2:00 p.m.**

One (1) electronic copy of the Proposal on a CD or flash drive in MS Word and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer plus one (1) copy of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

**Request for Proposals**  
**Attention: David Tate**  
**Name of Company Submitting Proposal**  
**Radios and Communication Equipment**  
**RFP # 269-2019-054**

RFP questions must be directed to David Tate, Finance Department – City Procurement, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Kay Elmore  
Chief Procurement Officer

cc: RFP Project Team  
RFP file

### Checklist for submitting a Proposal:

**Step 1-Read the document fully.**

**Step 2-**If you plan on submitting a Proposal then fax or email **Form 1 in Section 6** to the number listed on the sheet.

**Steps 3-**If you have any questions send them before the deadline listed in **Section 2.3**.

**If you plan on submitting a Proposal you must follow this checklist, and must include everything detailed below.**

**Proposal Copies** - Please provide the specified number for each format

- 1 Copy on CD or flash drive
- 1 Copy marked "Original"
- 1 Copy marked "Copy"

**Proposal Format** - Proposals should be formatted as follows:

- Cover Letter per **Section 4.1.1**
- Proposed Solution per **Section 4.1.2**
- Proposed Alternate in Lieu of Specified Brand per **Section 4.1.3**;
- Section 6, Form 2, Addenda Receipt Confirmation**
- Section 6, Form 3, Proposal Submission**
- Section 6, Form 4, Pricing Worksheet**
- Section 6, Form 5, MWBE Compliance**
- Section 6, Form 6, Company Background**
- Section 6, Form 7, References**
- Section 6, Form 8, Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- Section 6, Form 9, Byrd Anti-Lobbying Certification**
- Section 6, Form 10, CCPA Plan**
- Exceptions to any part of the RFP (If you take any exceptions to anything in this document list it in a category in your Proposal called "Exceptions" and offer an alternative solution).
- Full Line Product Catalog with List Pricing.

**The above items constitute all that must be included in the Proposal.** If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Exhibit A, Section 40.

**It is the Company's responsibility to check [www.ips.state.nc.us](http://www.ips.state.nc.us), the City's [Contract Opportunities Site](http://ncadmin.nc.gov/businesses/hub/events), or <https://ncadmin.nc.gov/businesses/hub/events> for any addenda or changes to this Project. Search for bid # 269-2019-054 to find if any documents or changes have been posted.**

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# Section 1

## Introduction and General Information

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### 1. INTRODUCTION.

#### 1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and Proposed Solution will best meet the City's needs.

#### 1.2. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Product or Service in accordance with the acceptance process and criteria set forth in the Agreement.
<i>Administrative Fee:</i>	Refers to a fee paid to the City for all expenditures made by the City and Participating Public Agencies per Section 6, Form 4.
<i>Affiliates:</i>	Refers to all departments or units of the City and all other governmental units, towns, boards, committees or municipalities for which the City processes data or performs Services that involve the System.
<i>Agreement:</i>	Refers to a contract executed by the City and Company for all or part of the Services covered by this RFP.
<i>Alternate:</i>	Refers to a product proposed by a Company to be evaluated by the City for "or equal" acceptability to the specifications outlined in this RFP.
<i>CBI:</i>	Refers to the Charlotte Business INCLUSION office of the City of Charlotte.
<i>CCPA:</i>	Refers to the Charlotte Cooperative Purchasing Alliance.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>City Project Manager:</i>	Refers to a specified City employee representing the best interests of the City for this Project.
<i>CLT Aviation:</i>	Refers to the City of Charlotte-Douglas International Airport.
<i>Company:</i>	During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services..
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Company Software:</i>	Refers to mean all pre-existing software owned by the Company or any of its "Related Entities" which the Company provides or is required to provide under this RFP, and all Updates and Enhancements to the foregoing. The term "Related Entity" shall mean any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to, parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority)

### **Introduction and General Information**

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of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.

<i>CSA:</i>	Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of: (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INCLUSION to determine eligibility to participate in the program.
<i>County:</i>	Refers to Mecklenburg County, North Carolina.
<i>Current Release:</i>	Refers to the latest version of the Software offered for general commercial distribution at a given point in time, including all Updates.
<i>Customizations:</i>	Refers to all newly-developed software created by the Company and/or its subcontractors pursuant to this RFP, including but not limited to all interfaces between different components of the System and between the System and other systems. Customizations will not include Updates and Enhancements that become part of the company Software.
<i>Defect:</i>	Refers to any failure of the System or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the City's improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the City's improper use or damage.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans and other items, which the Company is required to complete and deliver to the City in connection with this Agreement.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the System or any component thereof, and which are published or 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, logic diagrams, and other materials related to or for use with the System.
<i>Enhancements:</i>	Refers to any products, parts of products, improvements, additions or materials which are not included in the Products at the time of execution of an Agreement or that are subsequently developed, which modify the Products to provide a function or feature not originally offered or an improvement in function.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may

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	consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Evaluation Committee:</i>	Refers to a committee, as appointed by the City, responsible for determining the best Company for the Services described in this RFP.
<i>FCC:</i>	Refers to the Federal Communications Commission.
<i>Hardware:</i>	Refers to all hardware, equipment and materials which the Company actually provides or is required to provide under the terms of this RFP (whether now or in the future).
<i>ICOM:</i>	Refers to ICOM America, Inc.
<i>Lead Public Agency:</i>	Refers to the Charlotte-Mecklenburg Procurement Management Division.
<i>License:</i>	Refers to the license agreement.
<i>Maintenance Services:</i>	Refers to the maintenance services described in Section 3.
<i>MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>Milestones:</i>	Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the acceptance of identified Deliverables), as specified in this RFP.
<i>Motorola MotoTrbo:</i>	Refers to the MotoTrbo product line of two-way radios by Motorola Solutions, Inc.
<i>Participating Public Agency:</i>	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.
<i>Post-Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Project:</i>	Refers to the City's need for a company to provide Radios and Communication Equipment for the City.
<i>Products:</i>	Refers to all Software and all Hardware (both as herein defined).



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<i>Proposal:</i>	Refers to the Proposal submitted by a company for the Services as outlined in this RFP.
<i>Recyclability:</i>	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.
<i>Recycled Material:</i>	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.
<i>SBE:</i>	Refers to a business enterprise that is certified by the City of Charlotte under Part E of the CBI Policy as meeting all of the requirements for SBE certification.
<i>Services:</i>	Refers to the Radios and Communication Equipment as requested in this RFP.
<i>Software:</i>	Refers to (i) all Company Software; (ii) all Customizations; (iii) all Third Party Software; and (iv) all Updates and Enhancements of any of the foregoing.
<i>Source Code:</i>	Refers to the human readable form of a computer program and all algorithms, flow charts, logic diagrams, structure descriptions or diagrams, data format or layout descriptions, pseudo-code, code listings (including comments), and other technical documentation relating to such program.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or System which are set forth or referenced in: (i) this RFP; (ii) the Documentation; and (iii) any functional and/or technical specifications which 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 Products or the System.
<i>System:</i>	Refers to Radios and Communication Equipment to be designed, supplied, installed, configured, tested and commissioned by the Company under this RFP, including but not limited to all Products.
<i>System Acceptance:</i>	The term “System Acceptance” shall mean acceptance by the City of the complete System to be provided.
<i>Third Party Software:</i>	Refers to all software included within the System or required for the System to function in full compliance with the Specifications and Requirements that is provided by the Company as a result of this RFP and was not manufactured,

## Introduction and General Information

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developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company's subcontractors. The phrase "Related Entity" shall mean any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to any parent, subsidiary, and affiliate entities. The word, "control," as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.

<i>Trade Secrets:</i>	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.
<i>Updates:</i>	Refers to program logic changes made by the Company or its subcontractors or vendors to correct Defects in the Products and/or related Documentation delivered hereunder.
<i>Warranty Period:</i>	Refers to the twelve-month period following System Acceptance.
<i>WBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are female; and (c) is headquartered in the Charlotte.
<i>Workaround:</i>	Refers to a reasonable change in the procedures followed or data supplied to avoid a Defect that does not impair the performance of the System or increase the cost of using the System.
<i>Work Product:</i>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

### 1.3. Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary.

## **Introduction and General Information**

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Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

### **1.4. City's Rights and Options.**

The City reserves the right, at the City's sole discretion, to take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City, including: To supplement, amend, substitute or otherwise modify this RFP at any time;

- 1.4.1. To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2. To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3. To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and
- 1.4.9. To terminate discussions and negotiations with any Company at any time and for any reason.

### **1.5. Expense of Submittal Preparation.**

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

### **1.6. Proposal Conditions.**

The following terms are applicable to this RFP and the Company's Proposal.

- 1.6.1. RFP Not An Offer.  
This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and the Company execute an Agreement. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.
- 1.6.2. Trade Secrets and Personal Identification Information.

#### Definition.

Upon receipt by City Procurement, all materials submitted by a Company (including the Proposal) are considered public records except for (1) material that qualifies as

## Introduction and General Information

“trade secret” information under N.C. Gen. Stat. § 66-152 et seq. (“Trade Secrets”) or (2) “personal identification information” protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver’s license numbers (“Personally Identifiable Information” or “PII”).

### Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either “Personally Identifiable Information – Confidential” or “Trade Secret—Confidential and Proprietary Information.” For electronic submissions it must also be submitted on a separate CD or flash drive. In both hard copy or electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

### Availability of Proposals to City Staff and Contractors.

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

### Availability of Proposals via Public Records Requests.

Any person or entity (including competitors) may request Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify and Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

### 1.6.3. Commercial Non-Discrimination.

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City’s website (the “Non-Discrimination Policy”). As a condition of entering into an Agreement that may result from this RFP, the Company agrees to comply with the Non-Discrimination Policy, 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, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in the solicitation, selection, hiring, or treatment of subcontractors,

### **Introduction and General Information**

vendors, suppliers, or commercial customers 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.

As a condition of entering into an Agreement that may result from this RFP, the Company agrees to: (a) promptly provide to 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 the Agreement; and (b) if requested, provide to the City within sixty (60) 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 (5) years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company shall further agree 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 the Agreement 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 the Agreement and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

1.6.4. Statutory Requirements.

Any Agreement awarded as a result of this RFP shall be in full conformance with all statutory requirements of North Carolina and all statutory requirements of the Federal Government, to the extent applicable.

1.6.5. Reservation of Right to Change Schedule.

The City shall ultimately determine the timing and sequence of events resulting from this RFP. The City reserves the right to delay the closing date and time for any phase if City staff believe that an extension will be in the best interest of the City.

1.6.6. Reservation of Right to Amend RFP.

The City reserves the right to amend this RFP at any time during the process, if it believes that doing so is in the best interests of the City. Any addenda will be posted to the Internet at [www.ips.state.nc.us](http://www.ips.state.nc.us), bid# 269-2019-054. Companies are required to acknowledge their receipt of each addenda by including the Addenda Receipt Confirmation Form set forth in Section 6, Form Two with their Proposal.

1.6.7. Additional Evidence of Ability.

Companies shall be prepared to present additional evidence of experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to request such information at any time during the Proposal evaluation period for this RFP.

## Section 1

# Introduction and General Information

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- 1.6.8. No Collusion or Conflict of Interest.  
By responding to this RFP, the Company shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Company submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud.
- 1.6.9. Proposal Terms Firm and Irreversible.  
The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and Services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future contract negotiations unless specifically waived in writing by the City. The Company chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Agreement, either in part or in its entirety, at the City's election. Any false or misleading statements found in the Proposal or Agreement exceptions not included in the Proposal may be grounds for disqualification.
- 1.6.10. Proposal Binding for 180 Days.  
Each Proposal shall contain a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company and include their name, title, address, and telephone number. All prices quoted shall be firm and fixed for the full Agreement period. The City shall have the option to accept subject to exception by Agreement.
- 1.6.11. Charlotte Business INclusion Program.  
On April 8, 2013 the City adopted a new program that is structured to maximize opportunities for City of Charlotte Certified Small Business Enterprises (SBEs) and Minority and Women Enterprises (MWBES) that have been certified by the State's Historically Underutilized Business Office. MWSBES shall have the maximum opportunity to compete for and participate in the performance of contracts issued on behalf of the City of Charlotte. The City further requires that its contractors agree to take all the necessary and responsible steps to ensure that MWSBES have the maximum opportunity to participate as subcontractors for contractors issued by City of Charlotte, Economic Development Division.
- 1.6.12. Subcontracting.  
The Company given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Company shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors. Additionally, the City must be named as a third party beneficiary in all subcontracts.
- 1.6.13. Equal Opportunity.  
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.

# Section 1

## Introduction and General Information

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- 1.6.14. Use of City's Name.  
No advertising, sales promotion or other materials of the Company or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.15. Withdrawal for Modification of Proposals.  
Companies may change or withdraw their Proposals at any time prior to the Proposal due date; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by the City prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"
- 1.6.16. No Bribery.  
In submitting a response to this RFP, each 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 Agreement.
- 1.6.17. Exceptions to the RFP.  
Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the sample contract language included as Section 7. An "exception" is defined as the Company's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the sample contract language included as Section 7. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Company provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Company's solution, must be described in detail.
- 1.6.18. Fair Trade Certifications.  
By submission of a Proposal, the Company certifies that in connection with this procurement:
- The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone;
  - Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be disclosed by the Company prior to opening; and
  - No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
- 1.6.19. Clarification of Ambiguities.  
Any Company believing that there is any ambiguity, inconsistency or error in this RFP shall promptly notify the City in writing of such apparent discrepancy. Failure to notify will constitute a waiver of claim for ambiguity, inconsistency or error.

**Introduction and General Information**

1.6.20. Company’s Obligation to Fully Inform Themselves.  
Companies or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company’s own risk.

1.6.21. Environmental Preferable Purchasing.  
The City promotes the practice of Environmentally Preferable Purchasing (EPP) in acquiring products or services. Applicable EPP attributes that may be taken into consideration as environmental criterion include the following:

- |                                |                     |
|--------------------------------|---------------------|
| Recycled content               | Renewable resources |
| Recyclability                  | Packaging           |
| Biodegradability               | Reduced toxicity    |
| Energy and water efficiency    | Durability          |
| Low volatile organic compounds | Take back options   |

Companies able to supply products or services containing any of the applicable environmentally preferable attributes that meet performance requirements are encouraged to offer them in the Proposal. 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.

1.6.22. Environmental Reporting Requirements.  
The Company shall furnish quarterly usage reports showing a summary of the ordering and/or history of each City department for the previous quarter to the Procurement Services Division. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, City agency, and total dollars per agency. The City reserves the right to request additional information, if required, when reviewing contract activity.

1.6.23. Disclaimer.  
Each Company must perform its own evaluation and due diligence of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City.

**1.7. Charlotte Cooperative Purchasing Alliance.**

The Charlotte Cooperative Purchasing Alliance (“CCPA”) is a cooperative purchasing program established by the City of Charlotte with the specific purpose of reducing procurement costs by leveraging aggregate purchasing volume to receive better pricing.

The CCPA serves as a government cooperative purchasing organization for government agencies and all contracts are publicly solicited, awarded, and held by the City of Charlotte, North Carolina. CCPA contracts are available for use and benefit all entities that must comply with state purchasing laws.

The City of Charlotte is referred to in this procurement as “City.” The other government entities and nonprofits that may participate in a CCPA Contract are referred to as “Participating Public Agencies,” and may include any 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 that elects to access the CCPA contract.

Except as specifically set forth in the Company’s Proposal, the terms and conditions of the Contract entered into with the Company may be extended to other public entities that are or at any time in the future become members of the CCPA. Except as prohibited in the Proposal, and



### **Introduction and General Information**

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subject to the City and the Company entering into an administrative agreement that includes a fee payable to the City, Participating Public Agencies will have the right to enter into contracts with the Company at the same prices, discounts and other terms as are in the Company's Contract with the City.

If a Participating Public Agency decides to take advantage of this option, the Company may opt to enter into a separate contract with that public entity, and must deal directly with that public entity concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The City of Charlotte acts only as the entity conducting the initial procurement.

The Company may notify other public entities of the availability of the Contract for use under the CCPA. Other public entities desiring to procure Products and Services under the terms set forth in the City's Contract will need to make their own legal determinations as to whether the use of this Contract is consistent with their laws, regulations, and other policies.

The City of Charlotte shall not be held liable for any costs or damages incurred by any other public entity or the Company as a result of any contract or other arrangement entered into between that public entity and the Company.

Any subsequent contract(s) between a Participating Public Agency and an awarded Company shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists.

## Section 2 Procurement Process

### 2. PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

#### 2.1. Schedule and Process.

The following chart shows the schedule of events to prepare the Company's Proposal. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
March 19, 2019	<i>Issuance of RFP.</i> The City issues this RFP.
March 22, 2019	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the email or fax number listed in Section 2.3.
March 22, 2019	<i>Submission of Written Questions Prior to Pre-Proposal Conference.</i> Companies are permitted to submit written questions for purposes of clarifying this RFP. All submissions must be pursuant to the instructions in Section 2.3 by 2:00 p.m.
March 26, 2019	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 2:00 p.m.
April 5, 2019	<i>Final Submission of Written Questions.</i> Questions are due by 2:00 p.m.
April 16, 2019	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. at City Procurement, CMGC 9 <sup>th</sup> Floor.
April 16, 2019 – May 14, 2019	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
June 24, 2019	<i>Contract Award by Council.</i>
July 16, 2019	<i>Post Award Meeting.</i> City and Company will meet to discuss the performance of the new Contract. Meeting will be held at the CMGC 9 <sup>th</sup> Floor Large Conference Room 986 at 2:00 p.m.
July 30, 2019	<i>Services commence.</i> Company begins providing the Services.

#### 2.2. Intent to Propose.

Please acknowledge receipt of this RFP via email or facsimile by **March 22, 2019** using the Request for Proposals Acknowledgement Form located in Section 6, Form One. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Email or fax the completed and signed form to the email address or fax number below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference, but Companies shall not be precluded from submitting a Proposal if they fail to submit this form.

#### 2.3. Interpretations and Addenda.

There are two (2) ways to ask questions about this RFP: (1) submit a question in writing to the Procurement Officer at the e-mail address listed below; or (2) ask a question at the Pre-Proposal Conference. Other than these permitted methods, Companies should refrain from

## Section 2 Procurement Process

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contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

David Tate  
City of Charlotte  
City Procurement  
600 East 4<sup>th</sup> Street, CMGC 9<sup>th</sup> Floor  
Charlotte, NC 28202  
RFP # 269-2019-054  
Fax: 704-632-8520  
E-mail: [dtate@charlottenc.gov](mailto:dtate@charlottenc.gov)

When submitting questions, please reference the RFP page and topic number. In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **2:00 p.m. on March 22, 2019.**

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://www.ips.state.nc.us> and the City's [Contract Opportunities Site](#), referencing solicitation # 269-2019-054. Companies are required to acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 6, Form 2).

#### **2.4. Pre-Proposal Conference.**

A Non-Mandatory Pre-Proposal Conference will be conducted on **March 26, 2019 at 2:00 p.m.** The meeting will be held at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina 28202, 9th Floor Large Conference Room 986 or via teleconference by calling 704-336-5485.

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend. If special accommodations are required for attendance, please notify David Tate in advance of the conference date and time identifying the special accommodations required.

#### **2.5. Submit a Proposed Alternate Product in Lieu of a Specified Brand.**

Companies that desire to submit a proposed alternate Product in lieu of a brand specified in Section 3 of this RFP (referred to as an "Alternate") must submit the following for sample testing and evaluation:

- 2.5.1. A written statement identifying the manufacturer, brand name, make and, if applicable, style number.
- 2.5.2. Any descriptive literature such as illustrations, drawing or data that are necessary for the City to make a comparison with the brand specified for that item listed in Section 3.
- 2.5.3. Certified test reports (if applicable) by an independent laboratory attesting that the proposed Alternate is equal to or better than the specified brand with respect to the applicable specifications for which certified test reports are required.

## Section 2

### Procurement Process

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Failure to comply with each of the above requirements with respect to a proposed Alternate Product shall result in the City rejecting the Alternate as an acceptable “or equal” for the brand specified in Section 3.

#### 2.6. Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a CD or flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus one (1) copy shall be submitted to the address listed in Section 2.3 above by **April 16, 2019 on or before but no later than 2:00 p.m.** The original Proposal and the copy shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

**Due to increased security concerns at the Charlotte-Mecklenburg Government Center (CMGC), your sealed boxed including any portions marked as Confidential/Trade Secret, may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place and to re-seal the box if delivering your Proposal in person to the CMGC.**

Do not arrive at City Procurement on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved. All Proposals will be time-stamped upon receipt and held in a secure place until opening.

#### 2.7. Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Company further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

#### 2.8. Evaluation.

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required contractual Services, to learn the Company's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one or more Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Companies will be notified in advance of the time and format of such meetings.

Since the City may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall state the Company's best offer for performing the Services described in this RFP.

##### 2.8.1. Samples.

## Section 2

### Procurement Process

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Companies may be requested to submit samples of specific Groups of radios during the evaluation phase. If samples are requested, Companies shall submit two (2) samples of a certain group of radios, to be determined during the evaluation process, that are described in the Scope of Services Section 3.3, at no charge to the City for evaluation purposes. Samples shall be received by the City within five (5) business days of request by the City. Samples must be an exact and true representation of the actual Products that will be proposed in response to this RFP.

Upon receipt of the samples, the Evaluation Committee will conduct an evaluation of each product to determine the compliance with requirements outlined in Section 3 and whether the samples appear to be acceptable “or equal” alternates to the brand names listed. Companies may also be requested to come onsite to the City for programming and/or demonstration purposes. The testing of samples and evaluation process shall be conducted for an estimated two (2) weeks from the proposals submission date outlined in Section 2.1.

During the evaluation phase, the City reserves the right to contact Companies as the City deems necessary with questions or concerns regarding the sample submitted or with requests for additional documentation, samples or information. Companies must promptly comply with all such requests. The City is not responsible for locating or obtaining any information not identified in the proposal response. The City shall be the sole judge in determining the product acceptability.

At the conclusion of the sample evaluation process, the City shall return each sample to the Company.

#### **2.9. Contract Award by Council.**

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Company may request that it be released from the Proposal.

#### **2.10. Vendor Inclusion.**

The City’s vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City’s vendor registration system prior to submitting a Proposal, in order to execute a contract with the City and receive payment from the City, all Companies must register with the City’s vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You will also have the opportunity to complete any applicable certifications if your company desires to establish itself as an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/vendors>

**3. SCOPE OF RADIOS AND COMMUNICATION EQUIPMENT.**

**3.1. General Scope.**

The City of Charlotte manages an estimated 12,000 radios through all departments citywide. While the City is flexible with respect to certain elements of its proposed relationship with the Radios and Communication Equipment Services Provider, the City does have certain preferences for that relationship and has developed the following proposed model for that relationship.

**3.2. Product Specifications.**

Companies shall provide pricing for each type of radio listed below that meet the following specifications:

**Section 3**  
**Scope of Services**

**3.2.1. Portable Radios.**

<b>GROUP 1 – PORTABLE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
1.1	All Company equipment is expected to be of high quality and intended to provide high reliability under heavy use in severe environments. Equipment must be FCC type accepted in accordance with FCC Part 90 rules and regulations.			
1.2	All Company equipment shall meet MIL-STD-810 C, D, E, and F.			
1.3	All Company equipment shall be software programmable.			
1.4	All Company equipment shall support the following: <ul style="list-style-type: none"> <li>• Conventional analog;</li> <li>• Project 25 Conventional;</li> <li>• Project 25 Trunked Digital Phase 1;</li> <li>• Upgradable to Project 25 Trunked Digital Phase 2 (TDMA); and</li> <li>• Digital CAI Operation.</li> </ul>			
1.5	Features: <ul style="list-style-type: none"> <li>• Push-to-Talk (PTT) button;</li> <li>• Top-mounted on/off volume knob;</li> <li>• Talkgroup/channel selector;</li> <li>• Emergency button with protection from inadvertent activation;</li> <li>• Alphanumeric display (on applicable models) with a minimum of eight characters;</li> <li>• Transmit indicator.</li> </ul>			
1.6	Companies shall have the option to provide pricing for multiband portable radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

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<b>GROUP 2 – PORTABLE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
2.1	All Group 2 Portable Radios shall include the requirements listed in Group 1 in addition to the following:			
2.2	Certified as intrinsically safe.			
2.3	ADP Encryption option.			
2.4	Companies shall have the option to provide pricing for multiband portable radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

<b>GROUP 3 – PORTABLE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
3.1	All Group 3 Portable Radios shall include the requirements listed in Group 1 and Group 2 in addition to the following:			
3.2	Over the air programming (OTAP) capable to include: <ul style="list-style-type: none"> <li>• Integrated voice and data option;</li> <li>• Secure programming and seamless batch programming options;</li> <li>• POP25 option or equivalent.</li> </ul>			
3.3	Text Messaging Format capable to include: <ul style="list-style-type: none"> <li>• Programmable quick access buttons;</li> <li>• Store and forward text options.</li> </ul>			
3.4	GPS capable to include: <ul style="list-style-type: none"> <li>• Integration into main antenna.</li> </ul>			
3.5	SmartZone Operation.			
3.6	Integrated Voice & Data (IV&D) option.			
3.7	Integrated GPS option.			



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3.8	Advanced System Key (ASK) option.			
3.9	Radio Authentication option.			
3.10	Programming Over P25 (OTAP) option.			
3.11	Bluetooth option.			
3.12	Smart Battery Charging System option.			
3.13	Companies shall have the option to provide pricing for multiband portable radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

<b>GROUP 4 - MOTOTRBO SERIES PORTABLE RADIOS</b>				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
4.1	All Group 4 Portable Radios shall be brand specific or equal for the MotoTrbo Series radios.			
4.2	IMPRES Hi-Cap Li-ion 2150 mAH Battery (PMNN4409) or equal			
4.3	Slim IMPRES Li-ion 1500 mAH Battery (PMNN4407) or equal			
4.4	IMPRES Hi-Cap Li-ion FM 2300 mAH Battery (NNTN8129) or equal			
4.5	All radios, including “or equal” proposed radios, must be compatible with the CLT Aviation MotoTrbo Link Capacity Plus radio system.			
4.6	Companies shall provide proof of being an authorized reseller of these types of radios.			

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<b>GROUP 5 - ICOM PORTABLE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
5.1	All Group 5 Portable Radios shall be brand specific or equal for the ICOM avionics handheld radios.			
5.2	Companies shall provide proof of being an authorized reseller of these types of radios.			

<b>ACCESSORIES</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
6.1	Regardless of the Group of Portable Radios, Companies shall provide pricing for all optional OEM accessories including the following at a minimum:			
6.2	Programming Cables;			
6.3	Antennas;			
6.4	Batteries;			
6.5	Single-bay Battery Charger			
6.6	Multiple-bay Battery Charger			
6.7	Vehicular Battery Charger			
6.8	Remote Speaker Microphone;			
6.9	Remote Speaker Microphone with Antenna;			
6.10	Wired Headset			
6.11	Wireless/Bluetooth Headset			
6.12	Carrying Cases			
6.13	Belt Clips			
6.14	All proposed accessories shall be Original Equipment Manufacturer (OEM) and must be accompanied by a compatible portable radio in the Company's proposal.			

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<b>DETAILED EQUIPMENT SPECIFICATIONS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
7.1	Companies shall provide detailed equipment specifications for all proposed portable radios and accessories, including the follow information:			
7.2	Radio Dimensions			
7.3	Radio Weight with Battery			
7.4	Antenna Type			
7.5	Frequency Channel Capacity			
7.6	General features, transmit/ receive parameters, and mechanical specifications			

**Section 3**  
**Scope of Services**

3.2.2. **Mobile Radios/Control Stations**

<b>GROUP 6 - MOBILE RADIOS/CONTROL STATIONS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
8.1	All Company equipment is expected to be of high quality and intended to provide high reliability under heavy use in severe environments. Equipment must be FCC type accepted in accordance with FCC Part 90 rules and regulations.			
8.2	All Company equipment shall meet MIL-STD-810 C, D, E, and F.			
8.3	All Company equipment shall be software programmable.			
8.4	All Company equipment shall support the following: <ul style="list-style-type: none"> <li>• Conventional analog;</li> <li>• Project 25 Conventional;</li> <li>• Project 25 Trunked Digital Phase 1;</li> <li>• Upgradable to Project 25 Trunked Digital Phase 2 (TDMA); and</li> <li>• Digital CAI Operation.</li> </ul>			
8.5	Mobile radios shall be supplied complete with the following for a complete working solution: <ul style="list-style-type: none"> <li>• Microphone;</li> <li>• External Speaker;</li> <li>• Cables;</li> <li>• Fusing;</li> <li>• Mounting Hardware;</li> <li>• Coaxial Cable;</li> <li>• Antennas;</li> <li>• Installation Services.</li> </ul>			
8.6	Mobile Radios shall interface with on-board radio headset systems on vehicles as applicable.			
8.7	Control Station Radios shall be supplied with the following for a complete working solution: <ul style="list-style-type: none"> <li>• Desk Microphone;</li> <li>• Speaker;</li> <li>• Cables;</li> <li>• Coaxial Cable;</li> <li>• Antennas.</li> </ul>			

**Section 3**  
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8.8	Companies shall provide pricing for dash mounted units and remote mounted units.			
8.9	Features: <ul style="list-style-type: none"> <li>• Push-to Talk (PTT) button;</li> <li>• Front-mounted on/off volume knob;</li> <li>• Talkgroup/channel selector;</li> <li>• Alphanumeric display;</li> <li>• Transmit indicator.</li> </ul>			
8.10	Companies shall have the option to provide pricing for multiband mobile radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

<b>GROUP 7 - MOBILE RADIOS/CONTROL STATIONS</b>				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
9.1	All Group 7 Mobile Radios/Control Stations shall include the requirements listed in Group 6 in addition to the following:			
9.2	Certified as intrinsically safe.			
9.3	ADP Encryption option.			
9.4	Companies shall have the option to provide pricing for multiband mobile radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

**Section 3**  
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<b>GROUP 8 - MOBILE RADIOS/CONTROL STATIONS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
10.1	All Group 8 Mobile Radios/Control Stations shall include the requirements listed in Group 6 and Group 7 in addition to the following:			
10.2	Over the air programming (OTAP) capable to include: <ul style="list-style-type: none"> <li>• Integrated voice and data option;</li> <li>• Secure programming and seamless batch programming options;</li> <li>• POP25 option or equivalent.</li> </ul>			
10.3	Text Messaging Format capable to include: <ul style="list-style-type: none"> <li>• Programmable quick access buttons;</li> <li>• Store and forward text options.</li> </ul>			
10.4	GPS capable.			
10.5	SmartZone Operation.			
10.6	Integrated Voice & Data (IV&D) option.			
10.7	Advanced System Key (ASK) option.			
10.8	Radio Authentication option.			
10.9	Programming Over P25 (OTAP) option.			
10.10	Bluetooth option.			
10.11	Companies shall have the option to provide pricing for multiband mobile radios capable of operating in the following frequency bands: <ul style="list-style-type: none"> <li>• VHF: 136-174 MHz</li> <li>• UHF: 380-520 MHz</li> <li>• 700/800 MHz: 762-870 MHz</li> </ul>			

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<b>GROUP 9 - MOTOTRBO SERIES MOBILE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
11.1	All Group 9 Mobile Radios shall be brand specific or equal for the MotoTrbo Series radios.			
11.2	All radios shall be supplied complete with the following for a complete working solution: <ul style="list-style-type: none"> <li>• Microphone;</li> <li>• External Speaker;</li> <li>• Cables;</li> <li>• Fusing;</li> <li>• Mounting Hardware;</li> <li>• Coaxial Cable;</li> <li>• Antennas;</li> <li>• Installation Services.</li> </ul>			
11.3	All radios, including “or equal” proposed radios, must be compatible with the CLT Aviation MotoTrbo Link Capacity Plus radio system.			
11.4	Companies shall provide proof of being an authorized reseller of these types of radios.			

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<b>GROUP 10 - ICOM MOBILE RADIOS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
12.1	All ICOM Mobile Radios shall be brand specific or equal mobile vehicle mounted radios for communications to and from aircraft and/or a Federal Aviation Administration (FAA) tower in an Aviation environment.			
12.2	All ICOM Mobile Radios shall be Federal Communications Commission (FCC) type accepted according to FCC Part 87 (aviation services) and meet applicable rules for FCC Part 87 and Part 15.			
12.3	All ICOM Mobile Radios shall be made in accordance with RTCA DO-186B.			
12.4	All radios shall be supplied complete with the following for a complete working solution: <ul style="list-style-type: none"> <li>• Microphone;</li> <li>• External Speaker;</li> <li>• Cables;</li> <li>• Fusing;</li> <li>• Mounting Hardware;</li> <li>• Coaxial Cable;</li> <li>• Antennas;</li> <li>• Installation Services.</li> </ul>			
12.5	All radios shall contain the following features: <ul style="list-style-type: none"> <li>• Operation on USA Aviation Communications Band (118.00-136.992 MHz);</li> <li>• A120 only - Both 12- and 24-volt systems compatible;</li> <li>• A120 only - 8.33 kHz and 25 kHz channel spacing;</li> <li>• PC programming capability.</li> </ul>			
12.6	Companies shall provide proof of being an authorized reseller of these types of radios.			



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<b>ACCESSORIES</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
13.1	Companies shall provide pricing for all optional OEM accessories, including the following at a minimum:			
13.2	Cables: <ul style="list-style-type: none"> <li>• Data Cables;</li> <li>• Extension Cables;</li> <li>• Adapters;</li> <li>• Power Cables;</li> <li>• Programming Cables.</li> </ul>			
13.3	Antennas			
13.4	External Speakers			
13.5	Public Address Kits			
13.6	Desktop Microphone (Control Stations Only)			
13.7	All proposed accessories shall be Original Equipment Manufacturer (OEM) and must be accompanied by a compatible mobile radio or control station in the Company's proposal.			

<b>DETAILED EQUIPMENT SPECIFICATIONS</b>				
<b>SPEC #</b>	<b>SPECIFICATION</b>	<b>COMPLIANCE</b>		
		<b>YES</b>	<b>NO</b>	<b>EXCEPTION</b>
14.1	Companies shall provide detailed equipment specifications for all proposed mobile radios, control stations, and accessories, including the following information:			
14.2	Radio Dimensions			
14.3	Radio Weight			
14.4	Antenna Type			
14.5	Frequency Channel Capacity			
14.6	General features, transmit/receive parameters, and mechanical specifications.			

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#### 3.3. **Product Life.**

The useful life span of all radios and communication equipment shall be a minimum of one (1) year. During their life span and under normal wear conditions, the radios and communication equipment shall maintain integrity, functionality, and usability and other attributes as originally delivered.

#### 3.4. **Quantities.**

The City and 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.

#### 3.5. **Pricing.**

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars rounded to the nearest quarter of a dollar. A pricing worksheet is provided in Section 6, Form 4 to assist you.

The Lead Public Agency is requesting a fixed percentage discount from the Manufacturer's/Retail List Price (list price less discount) included in the Company's most current full line catalog for the items not included on the pricing worksheet. The Company shall provide a copy of their current full line catalog with list pricing or access to a website containing the full line catalog with list pricing. Pricing under this contract shall include all shipping and handling, delivery, vendor markup/profit, and storage. No other charges will be allowed.

To obtain a copy of the pricing worksheet in Excel format, please email David Tate at [dtate@charlottenc.gov](mailto:dtate@charlottenc.gov). Pricing worksheets must be submitted in Excel format on a compact disc or flash drive.

No catalog items can be excluded from the quoted list price less discounts based on gross profit floors, vendor costs, sourcing methods, or changing market conditions.

Discounts shall be firm for the life of the contract. Prices shall be firm for the entire three (3) year initial term of the contract. The prices shall also remain firm during the two (2) one-year renewal option terms unless the Lead Public Agency approves a price adjustment in writing. To request a price adjustment, the Company shall submit in writing to the City of Charlotte Procurement Management division any proposed price adjustments for review. Price increases will only be considered for legitimate, bona fide increases in the cost of materials. The Company shall provide a comparison of previous year prices and proposed new prices, showing the percent (%) difference. Price increases will not be considered more than once annually.

3.5.1. Pricing Incentives and Rebates: Identify any incentives and rebates offered based on volume, or other criteria on pricing worksheet in Section 6, Form 4.

#### 3.6. **Administrative Fees.**

The Company(s) shall pay the City a minimum of one (1) percent quarterly administrative fee based on overall CCPA Program spend by the City and Participating Public Agencies during the term of the contract and will include a report as mutually agreed to by the parties outlining the CCPA spend. The Administrative Fee shall be paid no later than 30 days after the end of each calendar quarter during the term of the contract. It is the responsibility of the Company to set the Administrative Fee on Section 6, Form 4.

#### 3.7. **Customer Service.**

The City is very focused on Customer Service with a philosophy to provide all customers with quality services in a manner that is courteous, responsive, accessible, and seamless. The Services will be delivered with patience, understanding, good will, and without regard to our

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own convenience. The selected Company will be expected to use these guidelines in developing the Proposed Solution:

- Accessible, courteous, responsive and seamless customer service is of highest priority for the City.
- Accessible service means that citizens have easy access to the organization.
- Seamless customer service means that a customer gets good service no matter who is responsible.
- Responsible customer service means that our employees know what they are doing; that information they give is accurate; that they have a good understanding of how to get problems and decisions made; that they are trained and evaluated for the jobs they are doing.
- Customer Service goals must be measurable and regularly evaluated.
- Continuous improvements in customer service must be made in order to make City services accessible, responsive and as seamless as possible.

#### **3.8. Reporting Requirements.**

##### **3.8.1 Project Reporting Requirements.**

The Company shall provide written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in this Scope of Services.

##### **3.8.2 Environmental Reporting Requirements.**

The Company shall furnish quarterly usage reports showing a summary of the ordering and/or history of each City department for the previous quarter to the Procurement Services Division. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, City agency, and total dollars per agency. The City reserves the right to request additional information, if required, when reviewing contract activity.

##### **3.8.3 CCPA Quarterly Quarterly Reports.**

The Company shall provide quarterly usage reports in Excel format to City Procurement by the 30<sup>th</sup> of January, April, July, and October. Reports must be designed in such a manner that the information captured on the purchase request shall also be reflected in the quarterly report. The reports must include but not limited to the City department, Participating Public Agency name, category, product/service description, product number, unit of measure, quantity, applicable percentage discount/list price, fixed unit price, and extended price for each item. The City and Participating Public Agency reserves the right to request additional information.

#### **3.9. City Hardware/Software Standards and Preferences.**

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

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implementation of these interfaces and the Company 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 (standards apply)	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 (standards apply)	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	

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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

### 3.10. Service Oriented Architecture.

The City is implementing a Service Oriented Architecture and prefers new technologies that apply the following Service Oriented Architecture elements:

- The System groups functionality around business processes and provides access to this functionality via interoperable services;
- Supplied services are engineered to improve System agility and to be generic and reusable;
- Disparate System components share related data to ensure consistency;
- Web services delivered as part of a COTS application *should* adhere to City's SOA Standards and Development Guidelines (*available upon request*); and
- Web services *developed* for the City of Charlotte as part of any engagement *must* adhere to City's SOA Standards and Development Guidelines (*available upon request*).

**3.11. Software Customizations.**

The City generally differentiates customization and configuration of software as follows:

- *Customization*: requires software code changes, generally done by the vendor, must be re-addressed if the software is upgraded
- *Configuration*: implies no code changes, can be performed by the customer through a user interface

Where possible, the City prefers solutions that do not have to be customized to meet business requirements. Configuration changes to meet requirements are an acceptable alternative.

**3.12. Security Requirements.**

The City of Charlotte is committed to protecting its information resources from accidental or intentional intrusion. To accomplish this, the City will require Information Security features be included with software/hardware purchases, (e.g. access permissions, encryption for restricted data and data that passes from trusted to untrusted networks (FTP, RDP, telnet, etc.), common authentication (Active Directory)). Please describe the security capabilities of the proposed technology, and your company's security procedures to include handling of electronic data, hard copy information, and employee security. If the software/hardware will process credit cards, please include PCI and PA-DSS compliance letters. Specific Information Security procedures and standards can be supplied upon request.

**3.13. Support and Maintenance.**

Beginning on the Date of Acceptance and continuing throughout the term of the Contract, the Company shall provide to the City the following Maintenance Services:

- Prevention and Correction of System Defects;
- Prevention and Correction of Software Defects;
- Prevention and Correction of Hardware Defects;
- Software Updates and Enhancements;
- Hardware Updates and Enhancements;
- Compliance with laws;
- Training and Documentation for Major Updates and Enhancements;
- Reporting of Defects;
- Telephone Support
- Remote Support
- Onsite Support;
- Change Control Procedures;
- Severity Levels, Response Times, and Resolution Times;
- Disaster Recovery;
- Phone Logs; and
- Technical Records.

**3.14. Representations and Warranties.**

The Company represents, warrants and covenants that:

- 3.14.1 The Services shall satisfy all requirements set forth in the Agreement, including but not limited to the attached Exhibits;
- 3.14.2 All work performed by the Company and/or its subcontractors pursuant to the Agreement shall meet highest industry standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

## Section 3

### Scope of Services

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- 3.14.3 Neither the Services, nor any Software or Hardware (delete as required) provided by the Company under the Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 3.14.4 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under the Agreement by virtue of interruptions in the computer systems used by the Company; and
- 3.14.5 In accordance with the North Carolina electronic data-processing records law N.C.G.S. §132-6-1:

All software and documentation provided by the Company or its subcontractors will have sufficient information and capabilities to enable the City to permit the public inspection and examination and to provide electronic copies of public records stored, manipulated or retrieved by the System; and

All software and documentation provided by the Company or its subcontractors will have sufficient information to enable the City to create an index containing the following information with respect to each database used by the System without extraordinary commitments of staff or resources: (i) annotated list of data fields: name, description, and restricted field indicator; (ii) description of the format or record layout; (iii) frequency with which the database is updated; (iv) list of any data fields to which public access is restricted; (v) description of each form in which the database can be copied or reproduced; (vi) title of the database; (vii) owner of the data; (viii) narrative description of the database; (ix) person creating the index; and (x) purpose of the database. The Company agrees that the information set forth in the preceding sentence constitutes a public record and may be disclosed by the City without the Company's consent.

#### **3.15. Background Checks.**

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

After starting work under the Agreement, the Company shall be required to, on an annual basis, perform a Background Check for each Company employee assigned to work under the Agreement 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 the Agreement, 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 the Agreement 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.

## Section 3

### Scope of Services

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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.

#### **3.16. Length of Relationship.**

The City expects to establish a long-term relationship with its Radios and Communication Equipment Company in order to permit costs and fees to be distributed properly over a sufficient time period. For purposes of this RFP and the Company's Proposal, assume an initial term of three (3) years, with the City having an option to renew for two (2) additional consecutive one (1) year terms thereafter.



## Section 4

### Proposal Format

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#### 4. PROPOSAL FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Company's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- a. Cover letter;
- b. Proposed Solution;
- c. Proposed Alternate in Lieu of Specified Brand (if applicable);
- d. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- e. The "Proposal Submission" set forth in Section 6, Form 3;
- f. The "Pricing Worksheet" set forth in Section 6, Form 4;
- g. The "MWSBE Compliance" set forth in Section 6, Form 5;
- h. The "Company Background" set forth in Section 6, Form 6;
- i. The "References" set forth in Section 6, Form 7;
- j. The "Certification Regarding Debarment, Suspension and Other Responsibility Matters" set forth in Section 6, Form 8;
- k. The "Byrd Anti-Lobbying Certification" set forth in Section 6, Form 9;
- l. The "CCPA Plan" set forth in Section 6, Form 10;
- m. Exceptions to the Remainder of the RFP, including the Sample Contract in Section 7; and
- n. Full Line Product Catalog with List Pricing.

The City encourages Proposals to be compatible with the City's waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals be printed 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies be printed double-sided;
- All copies be printed on recycled paper (at least 30% post-consumer recovered material and at least 30% total recovered material);
- Unless necessary, all Proposal originals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as 3- ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials be submitted in a format that allows for easy removal and recycling.

Proposals must also include a CD or flash drive including the entire Proposal in a searchable format such as MS Word or Adobe Acrobat.

**Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.**

#### 4.1. Proposal Content.

##### 4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall

## Section 4

### Proposal Format

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present the Company's understanding of the Project and a summary of the approach to perform the Services.

Each Company shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **“The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.”**

#### 4.1.2. Proposed Solution.

Given the purpose of this Project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. Following is a framework and questions to guide your organization's suggested solution. Please address the following as completely as possible. **If you wish to add supplemental information, it shall be labeled “Supplemental Information.”**

##### 4.1.4.1. Process.

What steps will your organization take to ensure that the transition or implementation for the Project runs smoothly?

##### 4.1.4.2. Transition Plan.

The Company shall prepare and submit to the City for approval a comprehensive and detailed Transition Plan, which describes in detail all tasks and resources associated with the transition of Radios and Communication Equipment to the Company (the “Transition Plan”) with minimum disruption to the City's operations. The Transition Plan is subject to the terms set forth in Section 7 of this RFP.

##### 4.1.4.3. Client Relationship Management.

Describe the communications scheme that your organization will use to keep the City informed about the progress of the Project.

##### 4.1.4.4. Risk Management.

Describe the risks associated with this contract. What contingencies have been built in to mitigate those risks?

##### 4.1.4.5. Requirements Matrix.

Each Proposal must include responses to the Requirements found as Section 3.2.

##### 4.1.4.6. Pricing.

The City is requesting firm fixed price Agreement for three (3) years plus pricing for contract extensions. Pricing **MUST** include all aspects of the Project. Please refer to Section 6, Form 4 for a pricing worksheet to assist you.

#### 4.1.3. Proposed Alternate in Lieu of Specified Brand

Companies that desire to submit a proposed alternate Product in lieu of a brand specified in Section 3 of this RFP (referred to as an “Alternate”) must include the following with their Proposal:

4.1.3.1. A written statement identifying the manufacturer, brand name, make and, if applicable, style number.

## Section 4 Proposal Format

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- 4.1.3.2. Any descriptive literature such as illustrations, drawing or data that are necessary for the City to make a comparison with the brand specified for that item listed in Section 3.
- 4.1.3.3. Certified test reports (if applicable) by an independent laboratory attesting that the proposed Alternate is equal to or better than the specified brand with respect to the applicable specifications for which certified test reports are required.

Failure to comply with each of the above requirements with respect to a proposed Alternate Product shall result in the City rejecting the Alternate as an acceptable “or equal” for the brand specified in Section 3.

- 4.1.4. Required Forms.  
To be deemed responsive to this RFP, Companies must complete in detail, all Proposal Forms listed in this Section 4, items numbered d through l.
- 4.1.5. Exceptions to the RFP.  
Exceptions must be submitted in accordance with Section 1.6.17 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample City Contract prior to signature, reviews must be completed before your Proposal is submitted.  
  
The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in Exhibit A (“Sample Terms”). The number and extent of any exceptions and proposed additions to the Sample Terms will be one of the City’s evaluation criteria.  
  
Accordingly, each Company must state specifically in its Proposal any exceptions to the Sample Terms, or any such exceptions will be waived. Any Company-proposed additional terms or conditions must also be included in the Proposal, and the City reserves the right to refuse consideration of any terms not so included. Any proposed changes to the Sample Terms after tentative contract award may constitute a material change to the Company’s Proposal and be grounds for revoking the award.  
  
Notwithstanding the foregoing, the City reserves the right to modify the Sample Terms prior to or during contract negotiations if it is in the City’s best interest to do so.
- 4.1.6. Full Line Product Catalog with List Pricing.  
Proposals shall include a copy of the Company’s full line catalog with list pricing or access to a website with the full line catalog and list pricing.

## Section 5

### Evaluation Criteria

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#### 5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Company's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Company to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Company's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Company to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Qualifications, Experience and Approach;
- b. Cost Effectiveness and Value;
- c. Testing of Alternates and Evaluations;
- d. CCPA Plan; and
- e. Acceptance of the Terms of the Agreement.

##### 5.1. Qualifications, Experience and Approach.

Companies will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by its experience in performing such Services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Company's approach for the provision of the Services.

##### 5.2. Cost Effectiveness and Value.

Under this criterion, Proposals will be compared in terms of the most reasonable, and or most effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the Services and administration of the Agreement.

##### 5.3. Testing of Alternates and Evaluations.

Companies may be required to submit two (2) sample units of specific Groups of radios being proposed. Companies may also be requested to come onsite to the City for programming and/or demonstration purposes. The testing of samples and evaluation process shall be conducted for an estimated two (2) weeks from when proposal are due in accordance with the proposals submission date outlined in Section 2.1. Samples shall be provided at no cost to the City during the evaluation period. The City shall be the sole judge in determining the product acceptability. Once evaluations are complete, the City will return each sample to the Company.

##### 5.4. CCPA Plan.

The City is committed to supporting the CCPA and making high quality contract opportunities available to Participating Public Agencies. Companies will be evaluated on the information provided in Section 6, Form 10 regarding their CCPA plan.

##### 5.5. Acceptance of the Terms of the Agreement.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Section 7. Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Section 1.6.17 of this RFP.

**Section 6**  
**Required Forms**

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**REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

The Company hereby certifies receipt of the Request for Proposals for the City of Charlotte, North Carolina RFP #269-2019-054, Radios and Communication Equipment. This form should be completed upon receipt of the City's Request for Proposals and faxed or emailed in time for the City to receive it by or before **March 22, 2019**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please fax or email the completed Request for Proposals Acknowledgement Form to the attention of:

David Tate  
Finance Department – City Procurement  
Fax: 704-632-8520  
Email: [dtate@charlottenc.gov](mailto:dtate@charlottenc.gov)

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

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

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

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

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

Contact E-mail address: \_\_\_\_\_

Please check the appropriate space below and provide the requested information:

\_\_\_\_\_ **We plan to attend the Pre-Proposal Conference and plan on submitting a Proposal**

Indicate number of attendees: \_\_\_\_\_

\_\_\_\_\_ **We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal**

Reason: \_\_\_\_\_

\_\_\_\_\_ **We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal**

Reason: \_\_\_\_\_

\_\_\_\_\_

**Section 6**  
**Required Forms**

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**REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to the NC IPS website at [www.ips.state.nc.us](http://www.ips.state.nc.us) and the City's Contract Opportunities Site at <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>.

**ADDENDUM #:**

**DATE ADDENDUM  
DOWNLOADED FROM NC IPS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that this proposal complies with the General and Specific Specifications and conditions issued by the City except as clearly marked in the attached copy.

\_\_\_\_\_  
(Please Print Name)

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

**REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

This Proposal is submitted by:

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

Representative (printed): \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: \_\_\_\_\_  
(Area Code) Telephone Number

Facsimile: \_\_\_\_\_  
(Area Code) Fax Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Company has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Company on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Company agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Company further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Company or terminate any contract awarded on such proposal.
5. As part of its Proposal, the Company shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Company in a legal or administrative proceeding alleging that the Company discriminated against its subcontractors, vendors or

## Section 6 Required Forms

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suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. None of Company's or its subcontractors' owners, employees, directors, or contractors will be in violation of the City's Conflict of Interest Policy for City, Secondary and Other Employment Relationships (HR 13) if a Contract is awarded to the Company.
8. It is understood by the Company that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and resolicit this RFP.
9. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Contract as included herein as Exhibit A. As such, I have elected to do the following:

Include exceptions to the Sample Contract in the following section of my Proposal: \_\_\_\_\_

Not include any exceptions to the Sample Contract.

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information ("PII") as detailed in Section 1.6.2. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

The following section(s) of the of the Proposal are marked as Trade Secret or PII: \_\_\_\_\_

No portion of the Proposal is marked as Trade Secret or PII.

**Representative (signed):** \_\_\_\_\_



**REQUIRED FORM 4 - PRICING WORKSHEET**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs for which the City will be responsible.**

For purposes of this RFP, assume an initial term of three (3) years, with the City having an option to renew for two (2) additional consecutive one (1) year terms thereafter.

**SEE ATTACHED PRICING SHEET. COMPANIES MAY REQUEST THE PRICING SHEET IN EXCEL FORMAT VIA EMAIL TO DAVID TATE AT [DTATE@CHARLOTTENC.GOV](mailto:DTATE@CHARLOTTENC.GOV).**

**PRICING SHALL BE SUBMITTED IN HARD COPY AND EXCEL FORMATS ON A COMPACT DISK OR FLASH DRIVE.**

All items shall be delivered within ten (10) business days of when a purchase order is issued by the City. The delivery schedule of all items shall remain in effect unless mutually agreed upon in writing by the City and the Company.

**1. Administrative Fees:**

The Company **shall** submit a minimum of one (1) percent of overall CCPA Program spend by the City and Participating Public Agencies during the term of the Contract to the City as an Administrative Fee. The Administrative Fee shall be paid no later than thirty (30) days after both parties mutually agree to the quarterly report outlining the CCPA spend. The Company shall indicate its Administrative Fee below:

_____ %
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**2. Non-Core Items – Fixed Percentage Discount**

The Company **shall** provide a fixed percentage discount from the List Price (list price less discount) included in the Company's most current full line catalog identified in the Specifications for all other items (Non-Core) included in the catalog for the life of the Contract.

a. Insert the verifiable catalog name/edition: \_\_\_\_\_

b. Insert the fixed percentage discount for Non-Core Items: \_\_\_\_\_

## Section 6 Required Forms

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### 3. Pricing Incentives and Rebates:

Please identify any incentive and rebates offered based on volume, dollar amounts, core credits or other criteria below:

Rebate Description	Amount or Percentage

Reference the Charlotte Cooperative Purchasing Alliance (CCPA) website at <http://www.charlottealliance.org>.



**REQUIRED FORM 5 – M/W/SBE UTILIZATION**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

The City maintains a strong commitment to the inclusion of MWSBEs in the City’s contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered MWSBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential MWSBEs to participate on this RFP.

<b>Company Name:</b>	
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Please indicate if **your company** is any of the following:

MBE     WBE     SBE     None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: \_\_\_\_\_ Effective Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Identify outreach efforts that *were employed* by the firm to maximize inclusion of MWSBEs to be submitted with the firm’s proposal (attach additional sheets if needed):

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Identify outreach efforts that *will be employed* by the firm to maximize inclusion during the contract period of the Project (attach additional sheets if needed):

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*[Form continues on next page]*

## Section 6 Required Forms

List below all **MWSBEs** that you intend to subcontract to while performing the Services:

Subcontractor Name	Description of work or materials	Indicate either "M", "S", and/or "W"	City Vendor #

Total MBE Utilization	%
Total WBE Utilization	%
Total SBE Utilization	%
<b>Total MWSBE Utilization</b>	<b>%</b>

**Representative (signed):** \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Representative Name

**Section 6**  
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**REQUIRED FORM 6 – COMPANY BACKGROUND RESPONSE**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

Question	Response
<b>Company Identification</b>	
Company Name (Official Name)	
Company Location (corporate headquarters)	
<b>Company Experience</b>	
<b>Years of Experience:</b>	
<i># of years in business:</i>	
<i># of years providing public sector Radios and Communication Equipment:</i>	
<b>Customer Base:</b>	
<i># of public sector clients</i>	
<i># of public sector clients using the services being proposed.</i>	
<i># of clients that are municipalities/counties</i>	
<i>Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization)</i>	
<b>Market Focus:</b>	
<i>Identify industries and public sector market segments served</i>	
<b>Terminated Projects:</b>	
<i>List any terminated projects. Please disclose the jurisdiction and explain the reason for the termination.</i>	
<b>Litigation:</b>	
<i>List any litigation that you have been involved with during the past two (2) years on Radios and Communication Equipment implementations.</i>	
<b>Organization Size</b>	
<b># of Employees:</b>	

## Section 6 Required Forms

<i>If Company is a subsidiary, identify # of employees in proposing company/division.</i>	
<b>Financial Information:</b>	
<i>If Company is a subsidiary, identify revenues of proposing company/division</i>	
<i>Identify the percentage of revenue used for research &amp; development by the proposing company/division</i>	
<b>Corporate Notes</b>	
<b>Ownership:</b>	
<i>Privately held? Publicly traded? Parent Company?</i>	
<b>Certified Partnerships:</b>	
<i>Identify any certifications held by your firm if you are implementing or reselling another firm's products. Include how long the partnership or certification has been effect.</i>	
<b>Additional Narrative Response</b>	
<b>Background and Experience:</b>	
<i>Provide an overview and history of your company.</i>	
<i>Describe your total organization, including any parent companies, subsidiaries, affiliates and other related entities.</i>	
<i>Describe the ownership structure of your organization, including any significant or controlling equity holders.</i>	
<i>Provide a management organization chart of your overall organization, showing director and officer positions and names and the reporting structure.</i>	
<i>Provide detailed information for the Radios and Communication Equipment business segments of your organization, showing the reporting structures within these segments and among these segments and the overall organization.</i>	

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<i>Describe any organizational changes such as divestitures, acquisitions, or spin-offs involving your Radios and Communication Equipment business segments that have occurred in the latest two (2) years or are anticipated in the future. Include all appropriate organizational charts.</i>	
<i>Detail how long the company has been providing Radios and Communication Equipment to local governments and include information regarding experience with similar Radios and Communication Equipment projects as described in Section 4.</i>	
<b>Personnel Management:</b>	
<i>Describe the key individuals, along with their qualifications, professional certifications and experience that would comprise your organization's team for providing Services to the City.</i>	
<i>Identify the extent, if any, of Small Business Enterprise participation in this Project.</i>	
<i>Explain how your organization ensures that personnel performing technical support services are qualified and proficient.</i>	
<i>Please provide information regarding the level of staffing at your organization's facilities, as well as the level of staffing at subcontractors' facilities, if known.</i>	

**REQUIRED FORM 7 – REFERENCES**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

**REFERENCE 1:**

Name of Client: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Service Dates: \_\_\_\_\_ Software Program/Version: \_\_\_\_\_

Summary & Scope of Project and List of Modules/Functionality Implemented: \_\_\_\_\_

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Operating Budget: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_

**REFERENCE 2:**

Name of Client: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Service Dates: \_\_\_\_\_ Software Program/Version: \_\_\_\_\_

Summary & Scope of Project and List of Modules/Functionality Implemented: \_\_\_\_\_

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Operating Budget: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_



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**REFERENCE 3:**

Name of Client: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Service Dates: \_\_\_\_\_ Software Program/Version: \_\_\_\_\_

Summary & Scope of Project and List of Modules/Functionality Implemented: \_\_\_\_\_

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Operating Budget: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_

**REFERENCE 4:**

Name of Client: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Service Dates: \_\_\_\_\_ Software Program/Version: \_\_\_\_\_

Summary & Scope of Project and List of Modules/Functionality Implemented: \_\_\_\_\_

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Operating Budget: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_

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**REFERENCE 5:**

Name of Client: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Service Dates: \_\_\_\_\_ Software Program/Version: \_\_\_\_\_

Summary & Scope of Project and List of Modules/Functionality Implemented: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Operating Budget: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_

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**REQUIRED FORM 8 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

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:**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**REQUIRED FORM 9 - BYRD ANTI-LOBBYING CERTIFICATION**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

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 and 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—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)].
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.

\_\_\_\_\_ (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.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Company Name

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City/State/Zip

**REQUIRED FORM 10 – CCPA PLAN**

**RFP # 269-2019-054**

**RADIOS AND COMMUNICATION EQUIPMENT**

Pursuant to N.C. G.S. 160A-461 and 143-129(e)(3), the City of Charlotte, Finance Department - City Procurement has established the Charlotte Cooperative Purchasing Alliance (CCPA). The purpose of the CCPA is to allow other public agencies regionally and nationwide to use contracts competitively solicited and awarded by the City of Charlotte (herein “City”). Combining the volumes of government agencies achieves cost effective pricing and reduces the administrative and overhead costs of suppliers and public agencies alike. By providing a comprehensive and competitively solicited Contract through a single bid process, 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), state, other government agency or nonprofit organization can utilize the subsequent contract(s) without the need for further solicitation. Companies should consider the potential volumes when responding to this RFP. Participation by other entities is strictly voluntary and no volumes are guaranteed. Participating Public Agencies are required to register to purchase products or services through the CCPA.

More information about the CCPA can be found on the CCPA website at: [www.charlottealliance.org](http://www.charlottealliance.org).

The objective of this RFP is to utilize participation among the City, as well as various other Participating Public Agencies, to provide low cost reliable Products and Services. The Company must agree to receive orders from the City and all Participating Public Agencies and to provide all Services ordered to a specified City and Participating Public Agency address.

Companies **shall** include in detail how they will serve all Participating Public Agencies as it relates to the CCPA. Currently the CCPA has approximately 380 registered Participating Public Agencies in Arizona, California, District of Columbia, Florida, Georgia, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia.

Please address the following:

1. Describe your company’s ability to provide Products/Services to any Participating Public Agencies in the contiguous 48 states; and the ability to deliver Products/Services in Alaska and Hawaii.
2. Address if your company has a national sales force, dealer network or distributor with the ability to serve Participating Public Agencies in all 50 U.S. states.
3. How will you monitor and report all spend by City/Participating Public Agencies to the City for auditing purposes?

The City will post all awarded contracts on the CCPA website, along with the respective vendor information. Please address the following accordingly:

1. Will your company allow the City to utilize their organization’s logo on the CCPA website?
2. Will your company be willing to advertise the CCPA logo and website on your organization’s website?
3. How do you plan to market the Contract(s) to other Participating Public Agencies?

**EXHIBIT A – SAMPLE CONTRACT**

**STATE OF NORTH CAROLINA**  
**COUNTY OF MECKLENBURG**

**MASTER CONTRACT FOR**  
**RADIOS AND COMMUNICATION EQUIPMENT**

This Contract for Radios and Communication Equipment (the “Contract”) is entered into as of this \_\_\_\_\_ day of [MONTH], 2019 (the “Effective Date”), by and between [COMPANY NAME], a [STATE OF INCORPORATION] corporation doing business in North Carolina (the “Company”), and the City of Charlotte, North Carolina (the “City”).

**Statement of Background and Intent**

- A. The City on behalf of itself and all local government agencies and non-federal government agencies within Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia, any city, county, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both private and public), other government agencies or nonprofit organizations that elect to access the Contract (herein “Participating Public Agency”) through the Charlotte Cooperative Purchasing Alliance (CCPA) sent out a “Request for Proposals for Radios and Communication Equipment, RFP #269-2019-054 dated March 19, 2019 requesting proposals from qualified vendors to provide the City with Radios and Communication Equipment per City requirements. This Request for Proposals, together with all attachments and amendments, is referred to herein as the “RFP”.
- B. In response to the RFP, the Company submitted to the Lead Public Agency a proposal dated March 21, 2019. This proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the “Proposal.”
- C. The Lead Public Agency and the Company now desire to enter into an arrangement for the Company to supply, install, customize, configure, test, commission and maintain Radios and Communication Equipment and services for the Lead Public Agency, all in accordance with the terms and conditions set forth herein.
- D. The Lead Public Agency awarded this contract on May 13, 2019 to Company to provide Radios and Communication Equipment to the City all in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

**CONTRACT**

- 1. EXHIBITS.** The following Exhibits and Appendices are attached to this Contract and incorporated into and made a part of this Contract by reference:

Exhibit A:	Price Schedule and List of Products and Services
Exhibit B:	License
Exhibit C:	Specifications and Requirements
Exhibit D:	Master Intergovernmental Cooperative Purchasing Agreement
Exhibit E:	Confidentiality Agreement
Exhibit F:	Company Background Check Policy
Exhibit G:	Subcontractor Background Check Policy

Exhibit H: Federal Contract Terms and Conditions

Each reference to the Contract shall be deemed to include all Exhibits and Appendices. With the exception of 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 H and the main body of this Contract or any other Exhibit to this Contract, the language of Exhibit H shall prevail. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

- 2. DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):
- 2.1. **“Acceptance”** means acceptance by the Lead Public Agency or a Participating Public Agency of the Products and/or Services as provided in Section 24 of this Contract.
  - 2.2. **“Affiliates”** means all departments or units of the Lead Public Agency and all other governmental units, towns, boards, committees or municipalities for which the Lead Public Agency processes data or performs services that involve the Products and Services specified herein.
  - 2.3. **“CCPA”** means the Charlotte Cooperative Purchasing Alliance.
  - 2.4. **“City”** means the City of Charlotte, North Carolina.
  - 2.5. **“CLT Aviation”** means the City of Charlotte-Douglas International Airport.
  - 2.6. **“Company Software”** shall be used interchangeably to mean all pre-existing software owned by the Company or any of its Related Entities which the Company provides or is required to provide under this Contract, and all New Releases and New Versions of the foregoing.
  - 2.7. **“Current Release”** means the latest version of the Software offered for general commercial distribution at a given point in time, including all New Releases.
  - 2.8. **“Customizations”** means all newly-developed Software created by the Company and/or its subcontractors pursuant to this Contract, including but not limited to all interfaces between different components and between the Products and other products or systems. Customizations will not include New Releases and New Versions that become part of the Company Software.
  - 2.9. **“Defect”** means any failure of the Products or Services or any component thereof to fully conform to the Specifications and Requirements. A non-conformity is not a Defect if it results directly from the Lead Public Agency’s or Participating Public Agency’s improper use or damage, unless it is reasonably likely that such non-conformity would have occurred on that or another occasion even without the Lead Public Agency’s or Participating Public Agency’s improper use or damage.
  - 2.10. **“Defective”** means containing a Defect.
  - 2.11. **“Documentation”** means all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Products or Services or any component thereof, and which are published or provided to the Lead Public Agency or a Participating Public Agency by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Products or Services.
  - 2.12. **“Effective Date”** means the date stated in the first sentence of this Contract.
  - 2.13. **“Embedded Software”** means Software that is embedded within a Company Product and is intended for use only with that Product, such as the Software within an End User Device.
  - 2.14. **“FCC”** means the Federal Communications Commission.

- 2.15. **“Hardware”** means all hardware, equipment and materials that the Company actually provides or is required to provide under the terms of this Contract (whether now or in the future).
- 2.16. **“ICOM”** means ICOM America, Inc.
- 2.17. **“Lead Public Agency”** means the Charlotte-Mecklenburg Procurement Management Division.
- 2.18. **“License”** means the license agreement.
- 2.19. **“Motorola MotoTrbo”** means the MotoTrbo product line of two-way radios by Motorola Solutions, Inc.
- 2.20. **“New Version”** means any Products, parts of Products, improvements, additions or materials not included in the Products as of the Effective Date that significantly modify the Products to provide a function or feature not originally offered or an improvement in function. New Versions are typically identified by a new version number that changes the number left of the decimal point. For example, a change from Version 5.0 to Version 6.0 would likely represent a New Version.
- 2.21. **“New Release”** means any change issued by the Company or its subcontractors to the Products or the Documentation that is not a New Version. New Releases are typically identified by changing the number to the right of the decimal point (e.g., going from Version 5.1 to 5.2).
- 2.22. **“Non-Company Software”** means all software included within the Products or required for it to function in full compliance with the Specifications and Requirements and Requirements that is provided by the Company under this Contract and was not manufactured, developed or otherwise created by the Company, any Related Entity of the Company, or any of the Company’s subcontractors.
- 2.23. **“Open Source Software”** means software with either freely obtainable source code, license for modification, or permission for free distribution. Also called “freeware” or “shareware.”
- 2.24. **“Participating Public Agency”** means any 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 that elects to participate in this Contract through the CCPA.
- 2.25. **“Project”** refers to the project for the Company to supply, install, configure, test, commission and maintain the Products for the Lead Public Agency or any Participating Public Agency in accordance with the terms and conditions in this Contract.
- 2.26. **“Products”** means all Software and all Hardware (both as herein defined).
- 2.27. **“Radios and Communication Equipment”** means end user equipment and/or devices which shall be meet the Specifications and Requirements and Requirements specified in this Contract. Radios and Communication Equipment are also referred to as “User Equipment” or “UE”.
- 2.28. **“Related Entity”** means any person or entity that is directly or indirectly in control of, controlled by, or under common control with the Company, including but not limited to any parent, subsidiary, and affiliate entities. The word, “control,” as used in this context, shall mean ownership of a sufficient percentage (not necessarily a majority) of the outstanding voting interests in an entity so as to afford effective control of the management of the entity.
- 2.29. **“Services”** means all services that the Company provides or is required to provide under this Contract, including but not limited to, any development, supply, installation, consulting, Products and Services integration, project management, training, technical and any implementation and maintenance services that the parties may agree to through purchase orders.



- 2.30. **“Software”** means: (i) all Company Software; (ii) all Customizations; (iii) all Non-Company Software; and (iv) all New Releases and New Versions of any of the foregoing.
- 2.31. **“Software License”** means the license agreement attached to this Contract as **Exhibit B**.
- 2.32. **“Specifications and Requirements”** means all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products or Services which are set forth or referenced in: (i) the main body of this Contract; (ii) Exhibits to this Contract; (iii) the Documentation; and (iv) any functional and/or technical specifications which 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 Products or the Services. Any conflict between the provisions referenced in subparts (i), (ii), (iii), or (iv) of this definition shall be resolved in the order of priority in which they are listed; provided, however, that the Lead Public Agency or a Participating Public Agency may, at its option, disregard the order of listing to resolve any such conflicts in a manner that takes advantage of new or enhanced functionality or features.
3. **TERM.** The initial term of this Contract will be for three (3) years from the Effective Date. The Lead Public Agency shall have the option to renew for two (2) additional one-year terms. This Contract may be extended only by a written amendment to the contract signed by both parties.
4. **REGULATORY REQUIREMENTS.** At the time of delivery of each Product, the Company will at the Company’s expense ensure that the Product is in compliance with federal and state regulations and requirements that have been issued as of the delivery date. Likewise, if any federal or state requirements have been issued as of the delivery date of a Product require the Lead Public Agency or a Participating Public Agency to impose obligations upon the Company, the Company will accept and deliver upon such obligation at the Company’s expense. After delivery of a Product, the Company will within a reasonable time achieve compliance with any new federal or state regulations and requirements that may be issued with respect to such Product, provided that the Company may require the user agency to pay a reasonable share of the cost of compliance.
5. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**
- 5.1. The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits when ordered from time to time by the Lead Public Agency and Participating Public Agencies. Except as set forth **Exhibit A**, the prices set forth in **Exhibit A** constitute all charges payable by the Lead Public Agency for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services. The Company shall perform any Services for the Lead Public Agency on site at the Lead Public Agency’s facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the Lead Public Agency.
- 5.2. **Placement of Orders:** All orders will be placed by personnel designated by the Lead Public Agency or a Participating Public Agency on an as needed basis for the quantity required at the time during the term of the Contract. Orders will be placed by means of an authorization method by the Lead Public Agency or the applicable Participating Public Agency.
6. **QUANTITIES.** The Lead Public Agency and Participating Public Agencies will issue purchase orders for quantities of Products as needed during the term of the Contract. The Lead Public Agency and Participating Public Agencies reserve the right to purchase Products and Services according to actual need and do not guarantee quantities. Any quantities listed in this Contract are estimates only, and may differ substantially from actual quantities ordered. Multiple orders will be placed on an as needed basis during the term of the Contract.
7. **OPTIONS AND ACCESSORIES.** The Lead Public Agency and Participating Public Agencies may in their discretion purchase from the Company options and accessories beyond what is called for in **Exhibit A**, provided that such purchase does not violate applicable federal, state or local procurement

requirements.

- 8. DOCUMENTATION.** The Company will provide for all Products purchased under this Contract written or electronic documentation that is complete and accurate, and sufficient to enable Lead Public Agency and Participating Public Agency employees with ordinary skills and experience to utilize such Products for the purpose for which the Lead Public Agency or Participating Public Agency is acquiring them.
- 9. COMPENSATION.** The Lead Public Agency and Participating Public Agencies shall pay the Company for the Products and Services delivered in compliance with the Specifications and Requirements at the fixed unit price for all Core Products and the fixed percentage discounts for all Non-Core Products set forth in Exhibit A. The fixed percentage discounts as applied to the Manufacturer's /Retail List Price (list price less discount) included in the Company's most current full line catalog for the Products not listed in Exhibit A. The Company shall not be entitled to charge the Lead Public Agency or Participating Public Agencies any prices, fees or other amounts that are not listed in Exhibit A.

**10. PRICE ADJUSTMENT.**

10.1. The price(s) stated in this Contract shall not increase for the entire three (3) year term of the Contract. The prices shall also not increase during the two (2), one-year renewal option terms unless the Lead Public Agency approves a price adjustment in writing in accordance with the following terms:

10.1.1. Price increases shall only be allowed when justified in the Lead Public Agency's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.

10.1.2. To obtain approval for a price increase, the Company shall submit a written request to the Procurement Management Division representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

City of Charlotte  
Finance Office / Procurement Management  
600 East Fourth Street  
Charlotte, NC 28202

10.1.3. No proposed price increase shall be valid unless accepted by the Lead Public Agency in writing. The Lead Public Agency may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the Lead Public Agency's sole discretion. The Company shall provide a comparison of previous year prices and proposed new prices, showing the percent (%) difference. If the Lead Public Agency rejects such price increase, the Company shall continue performance of the Contract. Price increases will not be considered more than once annually.

10.1.4. If the Lead Public Agency approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the Lead Public Agency shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the Lead Public Agency in writing if the market factors on which the Lead Public Agency granted the increase change such that the Lead Public Agency's reasons for granting the increase longer apply.

10.2. If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the Lead Public Agency with prompt written notice of all decreases in unit prices.

10.3. If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of **Exhibit A**. The Lead Public Agency reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to bid statute requirements. The Lead Public Agency may also delete radio and communication equipment items included in this Contract if items are no longer needed or no longer issued as part of radios and communication equipment. At no additional cost to the Lead Public Agency, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the Lead Public Agency's operating environment and is of equivalent or better quality to the Lead Public Agency. Any substitution will be reflected in a written signed change order.

**11. BILLING.** Each invoice sent by the Company to the City of Charlotte shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send all City of Charlotte invoices using one of the following options:

11.1 Option 1 – E-mail one copy of each invoice to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov). Company shall not mail invoices that have been sent via e-mail.

11.2 Option 2 – Mail one copy of each invoice to:

City of Charlotte Accounts Payable  
PO Box 37979  
Charlotte, NC 28237-7979  
Attn: Innovation & Technology

The Company shall send invoices to other Participating Public Agencies in a manner mutually agreeable to the Company and the Participating Public Agency. Payment shall be due within thirty (30) days after the Lead Public Agency's or Participating Public Agency's receipt of an accurate, properly submitted invoice, and (b) any other information reasonably requested by the Lead Public Agency or a Participating Public Agency to verify the charges contained in the invoice. Notwithstanding the forgoing, the Company shall only invoice for Products and Services that have been delivered and completed, and absent a milestone payment plan agreed upon in writing by the agency making payment, no payment shall be due earlier than ten (10) days after Acceptance of the applicable Product or Service. Invoices must include state and local sales tax. Invoices must include the item number, description, unit cost, quantity and extended price, and contract or purchase order number of each item purchased. All freight charges are included in the prices listed in **Exhibit A**. Title and risk of loss to Hardware will pass to Lead Public Agency or Participating Public Agency upon delivery. Title to Software will not pass at any time. Company will pack and ship all Products in accordance with good commercial practices.

The Company waives the right to charge the Lead Public Agency or a Participating Public Agency for Products or Services that have not been invoiced to the Lead Public Agency or Participating Public Agency within ninety (90) days after such Products or Services were delivered.

**12. ADMINISTRATIVE FEE.** The Company shall pay the Lead Public Agency a quarterly administrative fee in the amount of \_\_\_\_ % of all amounts paid by the Lead Public Agency and Participating Public Agencies under this Contract. The Company shall pay the administrative fee to the Lead Public Agency within thirty (30) days after both parties mutually agree to the quarterly report outlining the CCPA spend.

**13. GENERAL WARRANTIES.** Company represents and warrants that:

13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the State of [State of Incorporation], and is qualified to do business in North Carolina;

- 13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;
- 13.4 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;
- 13.5 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
- 13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.

**14. ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

- 14.1 Company represents warrants and covenants that:
  - 14.1.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits; and
  - 14.1.2 All work 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;
  - 14.1.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
  - 14.1.4 The Company shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines in providing the Products and the Services, and shall obtain all necessary permits and licenses.
- 14.2 **WARRANTY:** All Products supplied under the Contract shall be covered by a manufacturer's written guarantee and/or warranty that such Products will be free from material defects in material and workmanship for the lifetime of the Product; merchantable and in full conformity with the Specifications and Requirements set forth in this Contract, industry standards and Company's descriptions, representations and samples. The Company shall administer the warranty on the Lead Public Agency's or Participating Public Agency's behalf, and shall ensure that the manufacturer repairs or replaces at no charge to the Lead Public Agency or Participating Public Agencies all Products that violate either the above warranty or the applicable manufacturer's warranty.
  - 14.2.1 The Company shall provide the Lead Public Agency or Participating Public Agency with two (2) copies of the manufacturer's written warranty for each item of equipment.
  - 14.2.2 It shall be the responsibility of the manufacturer to pay all shipping and crating costs associated with warranty repairs.

**15. MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The Lead Public Agency reserves the right to award multiple contracts for the Products and Services required by this Contract if the Lead Public Agency deems multiple Contracts to be in the Lead Public Agency's best interest.

**16. 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; or (vi) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any of its subcontractors, including without limitation E-Verify or other immigration laws. For purposes of this Section: (a) the term “Indemnitees” means 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 16 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

- 17. 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 work.
- 18. DELIVERY TIME.** Company shall make every effort to ship radios and communication equipment within a reasonably requested delivery date. Standard subscriber radio delivery time is approximately ten (10) business days. Notwithstanding the foregoing, if Company cannot meet a delivery date requested in a Lead Public Agency or Participating Public Agency purchase order, Company will notify the Lead Public Agency or Participating Public Agency within ten (10) days after receipt of the order and propose an alternative delivery date. Upon receipt of such notice, the Lead Public Agency or Participating Public Agency will have ten (10) days to cancel the order. If the Lead Public Agency or Participating Public Agency fails to cancel the order within such ten (10) day period, the order shall go into effect and the Company shall be bound by the alternative delivery date it proposed. Unless Company notifies the Lead Public Agency or Participating Public Agency that it cannot meet a requested delivery date within ten (10) days after receipt of the Lead Public Agency or Participating Public Agency’s purchase order, Company shall be bound by the delivery date requested. The delivery date that the Company becomes bound to under this **Section 18** is referred to in this Contract as the “Binding Delivery Date.”
- 19. QUALITY.** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By “new”, the Lead Public Agency means that the item has been recently produced and has not been

previously sold or used.

Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Contract.

**20. DESIGN AND/OR MANUFACTURER REQUIREMENT.** All Products and Services shall meet the Specifications and Requirements, including those set forth in **Exhibit C** of this Contract.

**21. INSPECTION AT COMPANY'S SITE.** The Lead Public Agency reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the Lead Public Agency deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and Requirements and Requirements and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least thirty (30) days written notice to the Company (except that a store may be inspected at any time during regular store hours without notice). Such inspection will be limited to only those areas relevant to the performance of the Contract and to areas Company does not consider confidential or proprietary. A Company representative must accompany Lead Public Agency's employees at all times during any inspection.

**22. PREPARATION FOR DELIVERY.**

22.1 **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.

22.2 **Marking.** All cartons shall be clearly identified with the Lead Public Agency or Participating Public Agency purchase order number and the name of the department or key business making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc).

22.3 **Shipping.** The Company shall follow all shipping instructions included in this Contract and/or a purchase order issued by the Lead Public Agency or a Participating Public Agency.

**23. DELIVERY.**

23.1. All Products provided under this contract must be delivered F.O.B. Destination. Delivery and freight charges are to be included in discount price. Failure to comply with this requirement shall be cause to terminate this Contract unless such failure is confined to infrequent and isolated instances, which do not involve major purchases.

23.2. Deliveries to the Lead Public Agency must be made to the City of Charlotte's IT Communications Department located at 527 Spratt Street, Charlotte, NC 28206 unless otherwise directed by the Lead Public Agency in writing.

23.3. Each order delivered must have a packing slip enclosed. The packing slip must clearly show the items ordered, unit of measure, contract pricing, items enclosed and identify any items on backorder.

23.4. All Participating Public Agencies will require deliveries to specific locations to be designated by the Participating Public Agencies. Company must agree to provide the same delivery terms and conditions to all Participating Public Agencies that utilize this contract through CCPA.

**24. ACCEPTANCE OF PRODUCTS/SERVICES.** The Products delivered under this Invitation to Bid

shall remain the property of the successful Bidder until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the successful Bidder and return such Products (and any related goods) to the Bidder at the Bidder's expense. In the event the Services provided under this Invitation to Bid do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of Products upon written notice to the successful Bidder. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.

- 25. PERMITTING RESPONSIBILITIES.** All permits and inspections are the sole responsibility of the Company.
- 26. RIGHT TO COVER.** If the Company fails to comply with any term or condition of the Contract, and it fails to cure such default within thirty (30) days after receiving written notice from the Lead Public Agency of such failure, the Lead Public Agency or applicable Participating Public Agency may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- 26.1 In accordance with the terms and conditions of the Contract, subject to the 30-day right to cure, obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
  - 26.2 Recover from the Company the difference between what the Lead Public Agency or applicable Participating Public Agency paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract.
- 27. RIGHT TO WITHHOLD PAYMENT.** If the Company is in breach of the Contract, the Lead Public Agency or applicable Participating Public Agency shall have the right to withhold any payments relating to the Products or Services for which the Company is in breach if the Lead Public Agency or Participating Public Agency provides prompt notice of the breach and Company fails to cure within thirty (30) days of receipt of such notice.
- 28. NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
- 29. OTHER REMEDIES.** Upon breach of the 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.
- 30. FORCE MAJEURE.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- 30.1. If such failure or delay:
    - 30.1.1. could not have been prevented by reasonable precaution;
    - 30.1.2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
    - 30.1.3. 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.
  - 30.2. An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

30.3. Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) 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 fifteen (15) days, the Lead Public Agency shall have the right to terminate the Contract by written notice to the Company.

30.4. Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute “Force Majeure Events” and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

**31. COMMERCIAL NON-DISCRIMINATION.** The Lead Public Agency has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the Lead Public Agency’s website (the “Non-Discrimination Policy”). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, 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, suppliers, or commercial customers in connection with a Lead Public Agency 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 Lead Public Agency 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.

As a condition of entering into the Contract, the Company agrees to: (a) promptly provide to the Lead Public Agency all information and documentation that may be requested by the Lead Public Agency 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 Lead Public Agency within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on Lead Public Agency contracts in the past five years, including the total dollar amount paid by Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the Lead Public Agency pursuant to the Lead Public Agency’s Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the Lead Public Agency, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the Lead Public Agency from time to time on the Lead Public Agency’s request, payment affidavits detailing the amounts paid by 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 Lead Public Agency 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 Lead Public Agency contracts and other sanctions.

**32. CONTRACT MONITORING.** The Lead Public Agency shall have the right to audit the Company’s compliance with the terms and conditions of the Contract at such times as the Lead Public Agency deems appropriate, but not upon less than thirty (30) days written notice. Unless the Lead Public Agency elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the Lead Public Agency within thirty (30) days of notification of non-compliance. Company will not be required to disclose its confidential and proprietary information, including but not limited to cost or pricing data,



except as necessary to determine that the amounts invoiced by the Company are consistent with this Contract.

- 33. REPORTING.** The Company shall provide such written reports of purchasing and expenditures as may be requested by the Lead Public Agency from time to time, including without limitation any reports described in the Specifications and Requirements.
- 34. AUDIT.** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the Lead Public Agency shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Contract or the Lead Public Agency's payment obligations. The Lead Public Agency 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 Lead Public Agency in excess of \$15,000 but for the audit, then the Company shall be required to reimburse the Lead Public Agency for the cost of the audit. The Company will not be required to disclose its confidential or proprietary cost and pricing data which is not disclosed to customers, except as necessary to confirm that invoicing was in compliance with this Contract.
- 35. TAXES.** The Company shall pay all applicable federal, state and local taxes which may be chargeable against the delivery of the Products or the performance of the Services.
- 36. BACKGROUND CHECKS.** The Company will comply with the Company Background Check Policy set forth in **Exhibit F** with respect to all personnel who will be working on-site at any Lead Public Agency or Participating Public Agency facility or who will have access to Confidential Information (as defined in the Confidentiality Agreement). The Company will require each of its subcontractors to comply with the Subcontractor Background Check Policy set forth in **Exhibit G** with respect to all personnel who will be working on-site at any Lead Public Agency or Participating Public Agency facility or who will have access to Confidential Information (as defined in the Confidentiality Agreement).
- 37. CUSTOMER SERVICE REPRESENTATIVE.** The Company must dedicate a Full-Time "Account Executive" for servicing this Contract. The account executive must be available by cell phone. The cell phone must be operational at all times. All communicational contact, either via phone, email, etc. must be addressed with a response within two (2) business days. The account executive must be available to attend meetings regarding Products and Services issues upon request. The account executive will be responsible for providing immediate response and quick resolution of all the service issues and complaints of Lead Public Agency and Participating Public Agency personnel. The account executive must have an in-depth knowledge of all items provided in this bid and have immediate access to manufacturers providing the Products. He or she must have the ability and authority to make decisions on behalf of their employer enabling them to provide both normal and emergency service as necessary.
- 38. COMPANY PERSONNEL REPLACEMENT.** The Company shall consult with the Lead Public Agency regarding the replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the Lead Public Agency.
- 39. NO LIMITATIONS ON DISCLOSURE.** Company agrees that the Lead Public Agency shall be able to disclose and distribute to any persons or entities, without restriction, all samples and other Products provided under in the procurement process or under the Contract.
- 40. INSURANCE.** Throughout the term of this Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Section, or in the event the Company fails to provide the Lead Public Agency with the required certificates of insurance, the Lead Public Agency shall be entitled to terminate this Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of this

Contract with an insurance company reasonably acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

- A) **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 each occurrence/aggregate.
- B) **Commercial General Liability:** Bodily injury and property damage liability as shall protect the Company performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract. 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, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.
- C) **Workers' Compensation:** Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The Lead Public Agency shall be included as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the Lead Public Agency for loss or damages arising from the Consultant's operations under this Contract.

The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been reasonably approved by the Lead Public Agency. The Company shall be required to obtain the Lead Public Agency's prior written approval as to the types and levels of insurance required of each subcontractor working under this Contract, and shall not allow a subcontractor to commence work under this Contract until such prior written approval has been obtained and such insurance procured, provided that the Lead Public Agency shall not unreasonably withhold approval.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the Lead Public Agency with proof of insurance coverage by certificates of insurance within ten (10) days of Contract execution and shall include the Lead Public Agency as an additional named insured under the commercial general liability.

**All insurance certificates must include the Lead Public Agency's contract number in the description field.**

The Lead Public Agency shall be exempt from, and in no way liable for any sums of money that 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.

The insurance required by this Section shall also cover any Participating Public Agencies that place orders under this Contract through the CCPA. Each Participating Public Agency shall be responsible for obtaining its own certificates of insurance to confirm such coverage.

- 41. CONFIDENTIALITY.** The parties shall comply with the Confidentiality Agreement, which is attached to this Contract as **Exhibit E** and incorporated herein by reference.

The Company will treat as confidential information all data provided by the Lead Public Agency in connection with this Contract. Lead Public Agency data processed by the Company shall remain the exclusive property of the Lead Public Agency. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the Lead Public Agency in any manner except that contemplated by this Contract.

**42. CHARLOTTE COOPERATIVE PURCHASING ALLIANCE.** The Company acknowledges and agrees that this Contract was entered into following a procurement process through the Charlotte Cooperative Purchasing Alliance (“CCPA”), and that the terms under which other agencies participate in the CCPA are referenced in this Section.

Except as specifically set forth herein, the terms and conditions of the Company’s Contract with the Lead Public Agency may be extended to other public entities that are, or at any time in the future become members of CCPA (“Participating Public Agencies”). Except as for the “Negotiable Provisions” as defined herein, and subject to the Lead Public Agency and the Company entering into an administrative agreement that includes a fee payable to the Lead Public Agency, Participating Public Agencies will have the right to enter into contracts with the Company at the same prices, discounts and other terms as are in the Company’s Contract with the Lead Public Agency. Participating Public Agencies may do so by executing a purchase order or other document that incorporates this Contract by reference, and identifies any additional terms and any Negotiable Provisions that do not apply.

If a Participating Public Agency decides to participate in this Contract, the Company must deal directly with that agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The Lead Public Agency acts only as the entity conducting the initial procurement, and will not be responsible for any obligations of any Participating Public Agency or of the Company in connection with matters.

The Company may notify other public entities of the availability of the Contract(s) for use under the CCPA. Other public entities desiring to procure Products and Services under the terms set forth in the City’s Contract will need to make their own legal determinations as to whether the use of this Contract is consistent with their laws, regulations, and other policies.

Each Participating Public Agency has the option of executing a separate contract with Company to incorporate the terms and conditions set forth in this Contract. Participating Public Agencies may add terms and conditions to their proposed contract(s) with the Company to the extent allowed or required by statute, ordinances, regulations or policy. If such proposed additional terms are not acceptable to the Company, the Company may refuse to enter into a contract with such public entity.

The Lead Public Agency **shall not** be held liable for any costs or damages incurred by any other Participating Public Agency or the Company as a result of any order, contract or other arrangement entered into between that public entity and the Company.

**43. TERMINATION.**

43.1. *WITHOUT CAUSE.* The Lead Public Agency may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the Lead Public Agency. The Lead Public Agency will pay for any Products delivered to the City of Charlotte and Services rendered to the City of Charlotte in accordance with this Contract, up to the date of Termination, subject to the Lead Public Agency’s right to return Products and Services as provided in this Contract.

43.2. *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:

43.2.1. 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

43.2.2. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or

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

43.3. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE LEAD PUBLIC AGENCY.** By giving written notice to the Company, the Lead Public Agency may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

43.3.1. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or

43.3.2. 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 coverage as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

43.4. **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.** Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the Lead Public Agency, 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.

43.5. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly (a) return to the Lead Public Agency all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the Lead Public Agency; (b) provide the Lead Public Agency with sufficient data necessary to migrate to a new vendor, or allow the Lead Public Agency or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the Lead Public Agency all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

43.6. **NO SUSPENSION.** In the event that the Lead Public Agency or a Participating Public Agency 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 delivery of Products or 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.

43.7. **AUTHORITY TO TERMINATE.** The Charlotte City Manager or their designee is authorized to terminate this Contract on behalf of the Lead Public Agency.

**44. NON-APPROPRIATION OF FUNDS.** If the governing body of the Lead Public Agency or a Participating Public Agency does not appropriate the funding needed by the Lead Public Agency or a

Participating Public Agency to make payments under this Contract for a given fiscal year, the affected agency will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated, except such agency shall pay for all Products delivered or Services rendered up to the notice of termination for non-appropriation of funds, subject to the right to return Products under this Contract. In such event, the agency will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the agency, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

**45. TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the Lead Public Agency and each affected Participating Public Agency to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the Lead Public Agency or Participating Public Agency as determined by the agency in its sole discretion. The transition services that the Company shall perform if requested by the Lead Public Agency or Participating Public Agency include but are not limited to:

- 45.1 Working with the agency to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services;
- 45.2 Notifying all affected vendors and subcontractors of the Company of transition activities;
- 45.3 Performing the transition service plan activities;
- 45.4 Answering questions regarding the products and services on an as-needed basis; and
- 45.5 Providing such other reasonable services needed to effectuate an orderly transition to a new system.

**46. 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 activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the Lead Public Agency that may arise under law or under the terms of this Contract.

**47. SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the Lead Public Agency's prior written consent. In the event the Lead Public Agency does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract.

**48. WORK ON LEAD PUBLIC AGENCY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the Lead Public Agency's premises, obey all instructions and directions issued by the Lead Public Agency's project manager with respect to work on the Lead Public Agency's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the Lead Public Agency when on the Lead Public Agency's premises.

**49. DRUG-FREE WORKPLACE.** The Lead Public Agency is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

- 49.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 49.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii)

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- any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 49.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 49.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 49.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 49.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

**50. NOTICES.** 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. 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.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

<b>For The Company:</b>	<b>For The City:</b>
	Kay Elmore
	City of Charlotte
	City Procurement
	600 East Fourth Street, 9 <sup>th</sup> Floor
	Charlotte, NC 28202
	Phone: 704-336-2524
	Fax: 704-632-8252
	E-mail: <a href="mailto:kelfmore@charlottenc.gov">kelfmore@charlottenc.gov</a>
<b>With Copy To:</b>	<b>With Copy To:</b>
	Adam Jones
	City of Charlotte
	City Attorney's Office
	600 East Fourth Street, 15 <sup>th</sup> Floor
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax:
	E-mail: <a href="mailto:amjones@charlottenc.gov">amjones@charlottenc.gov</a>

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

**51. MISCELLANEOUS.**

- 51.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. 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.
- 51.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the Lead Public Agency may require execution by a Department Director, the Charlotte City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by the Charlotte City Council.
- 51.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such 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.
- 51.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. Notwithstanding the foregoing, Company may assign this Contract to any of its affiliates or its right to receive payment without the prior consent of the Lead Public Agency, provided that the Company shall remain obligated for all performance obligations under this Contract and any costs or damages that may accrue. For purposes of this Section, a Change in Control, as defined in **Section 51.7** constitutes an assignment.
- 51.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit 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.
- 51.6 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 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.
- 51.7 CHANGE IN CONTROL. In the event of a change in “Control” of the Company (as defined below), the Lead Public Agency shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the Lead Public Agency within ten 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.

- 51.8 NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the Lead Public Agency in connection with this Contract.
- 51.9 SURVIVAL OF PROVISIONS. Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to the following Sections of the Contract:
- Section 2** Definitions
  - Section 4** Regulatory Requirements
  - Section 12** Administrative Fee
  - Section 13** General Warranties
  - Section 14** Additional Representations and Warranties
  - Section 16** Indemnification
  - Section 24** Acceptance of Products/Services
  - Section 27** Right to Withhold Payments
  - Section 29** Other Remedies
  - Section 31** Commercial Non-Discrimination
  - Section 34** Audit
  - Section 41** Confidentiality
  - Section 42** Charlotte Cooperative Purchasing Alliance
  - Section 43** Termination
  - Section 45** Transition Services Upon Termination
  - Section 50** Notices
  - Section 51** Miscellaneous
- 51.10 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 Lead Public Agency in any manner without the prior written consent of the Lead Public Agency. Notwithstanding the forgoing, the parties agree that the Company may list the Lead Public Agency as a reference in responses to requests for proposals, and may identify the Lead Public Agency as a customer in presentations to potential customers.
- 51.11 MANUFACTURER OR DEALER ADVERTISEMENT. No manufacturer or dealer shall advertise on Products delivered to the Lead Public Agency without prior approval by the Lead Public Agency.
- 51.12 NC E-VERIFY REQUIREMENT. 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.
- 51.13 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.
- 51.14 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



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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.

**[INSERT COMPANY NAME]**

**BY:** \_\_\_\_\_  
*(signature)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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

**BY:** \_\_\_\_\_  
*(signature)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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

**BY:** \_\_\_\_\_  
*(signature)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**EXHIBIT A – PRICE SCHEDULE AND LIST OF PRODUCTS AND SERVICES**

This **Exhibit A** is incorporated into and made a part of the Contract for Radios and Communication Equipment (“Contract”) between the City of Charlotte (the “Lead Public Agency”) and [Company Name] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of this Contract.

During the term of the Contract, the Lead Public Agency and Participating Public Agencies shall have the right to purchase and the Company shall sell to the Lead Public Agency the following Products and Services at the prices set forth below. All Products purchased pursuant to the Contract shall comply with the Specifications and Requirements, including those set forth in **Exhibit C**.

**EXHIBIT B – LICENSE**

This Exhibit is incorporated into and made a part of the Master Contract for System Integration (“MCSI”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the MCSI. For purposes of this Exhibit only, the term “Software” shall not be deemed to include Customizations, given that the Customizations are owned by the City and require no license.

**1. GRANT OF LICENSE.**

- 1.1. GRANT OF LICENSE. Subject to the restrictions set forth in **Section 1.2** below, the Company grants to City and the Affiliates a perpetual, nonexclusive, irrevocable, nontransferable, royalty-free license to:
  - (a) Use the Software and the Documentation for all purposes set forth or referenced in the MCSI or the City’s RFP or the Company’s Proposal, including but not limited to: (a) the operation and use of the System, (b) internal training and testing, (c) development, (d) disaster recovery, backup, archive and restore testing and implementation purposes and (e) any other purpose related to the above; and
  - (b) Allow direct and remote access to the Software and Documentation by an unlimited number of users and departments of: (a) the City; (b) any Affiliate, (c) any other entity to which the City provides services through use of the System; and (d) any other person or entity to which the City needs to allow access in order to provide services to any of the above through the System;
  - (c) Modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation on its own or through a third party; and
  - (d) Make as many copies of the Software and Documentation as it desires in support of its authorized use of the Software, provided that said copies shall include the Company’s or the third party owner’s copyright and other proprietary notices (as the case may be).
- 1.2. RESTRICTIONS ON USE. The City shall not use, copy, disclose or distribute the Software except as permitted by this License.
- 1.3. THIRD PARTY ACCESS. The City may: (a) allow access to the Software and Documentation by third party contractors to modify, improve, enhance, update, integrate and make derivative works of the Software and the Documentation, and (b) make and provide a copy of the Software and Documentation to third parties to whom the City has outsourced disaster recovery functions, operations of human resources, or Year 2000 testing; provided that such third parties execute an agreement containing provisions substantially similar to those set forth in the Confidentiality Agreement.
- 1.4. SOURCE CODE. Company shall cause the Source Code for all Customizations (and Updates and Enhancements thereof) to be delivered to the City within ten days after delivery of the Customization. Company shall cause the Source Code for all Company Software (including Updates and Enhancements) to be delivered to the source code escrow agent identified in the Source Code Escrow Agreement. The City shall be given the Source Code under the conditions stated in the Source Code Escrow Agreement.

**2. DELIVERY, TESTING AND ACCEPTANCE.**

- 2.1. DELIVERY. The Company shall cause the Software to be delivered, configured and integrated at the times set forth in Exhibit C, the Project Schedule and the Project Plan. Any breach by the Company under the MCSI shall constitute a breach of this License.

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- 2.2. ACCEPTANCE. The Software shall not be deemed to have been accepted by the City until System Acceptance has occurred.
- 2.3. ENHANCEMENTS AND UPDATES. Company shall provide Enhancements and Updates to the City for so long as the Maintenance Services are in effect. Upon delivery to the City, such Enhancements and Updates of the Company Software and Third Party Software shall be deemed incorporated into and made part of the Company Software or the Third Party Software (as the case may be).

**EXHIBIT C – SPECIFICATIONS AND REQUIREMENTS**

These Requirements are incorporated into and made a part of the Master Agreement for System Integration (“MASI”) between the City of Charlotte (the “City”) and [INSERT COMPANY NAME] (the “Company”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the MASI.

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**EXHIBIT D - MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING  
AGREEMENT**

This **Exhibit D** is incorporated into and made a part of the Contract for Radio and Communication Equipment (“Contract”) between the City of Charlotte (the “City”) and [Company Name] (the “Company”). Some of the terms under which other agencies participate in the Charlotte Cooperative Purchasing Alliance appear in this **Exhibit D**.

This Charlotte Cooperative Purchasing Alliance (“CCPA”) Master Intergovernmental Cooperative Purchasing Agreement (“CCPA Master Agreement”) will allow a Participating Public Agency to purchase commodities and/or services from any and all CCPA cooperative purchasing 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 that:

1. CCPA has followed procurement procedures for Products and/or Services offered by each CCPA cooperative purchasing contract in accordance with CCPA’s governing procurement statutes and regulations.
2. The cooperative use of proposals obtained by a party to this CCPA Master Agreement shall be in accordance with the terms and conditions of the solicitation document, 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 its 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 Participating Public Agencies.
5. It is the sole responsibility of the Participating Public Agency to accept delivery of Products and/or Services, and the Participating Public Agency hereby agrees to make timely payments to each company for Products and/or Services received pursuant to a CCPA cooperative purchasing contract. Any dispute which may arise between the Participating Public Agency and the Company are to be resolved between the Participating Public Agency and a company that is a party to a CCPA contract.
6. The Contracting Agent 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 Participating Public Agency and the Company.
7. A procuring Participating Public Agency shall not use a CCPA cooperative purchasing contract as a method for obtaining additional concessions or reduced prices for similar products or services.
8. This CCPA Master 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 CCPA Master Agreement. This CCPA Master Agreement shall not be altered, changed, or amended except by written revision or addendum executed by both parties.
9. This CCPA Master 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 CCPA Master Agreement shall take effect after the Participating Public Agency submits the completed electronic CCPA registration and shall remain in effect until termination by a party giving 30 days written notice to the other party.

**EXHIBIT E – CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_ (the "Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation (the "City"), and [INSERT COMPANY NAME], a [INSERT STATE OF INCORPORATION OR STATE "A COMPANY DOING BUSINESS IN NORTH CAROLINA"] corporation (the "Company").

WHEREAS, the City and Company are contemplating or have entered into certain business relationships and have exchanged and/or may need to exchange confidential information in connection with discussions of such relationships; and

WHEREAS, the City and Company desire to stipulate and agree that any disclosure of confidential information in connection with such relationships has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

NOW, THEREFORE, in consideration of the pursuit of current discussions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

- 1. CONFIDENTIAL INFORMATION.** "Confidential Information" means any information, in any medium (whether written, oral or electronic), obtained from the City or the Company or any of their respective suppliers, contractors or licensors which falls within any of the following general categories:
  - 1.1. *Trade secrets.* For purposes of this Agreement, trade secrets consist of information of the City or the Company or any of their respective 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.
  - 1.2. *Information marked "Confidential" or "Proprietary."*
  - 1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
  - 1.4. *Any attorney / client privileged information disclosed by either party.*
  - 1.5. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.*
  - 1.6. *Personal identifying information about individuals that the City is prohibited from disclosing by law, including:*
    - (a) Social security or employer taxpayer identification numbers.
    - (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.
    - (c) Checking account numbers.
    - (d) Savings account numbers.
    - (e) Credit card numbers.
    - (f) Debit card numbers.
    - (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
    - (h) Digital signatures.
    - (i) Any other numbers or information that can be used to access a person's financial resources.



- (j) Biometric data.
  - (k) Fingerprints.
  - (l) Passwords.
- 1.7. *The security features of the City's electronic data processing systems, information technology systems, telecommunications networks, and electronic security systems, including passwords, security standards, security logs, procedures, processes, configurations, software and codes.*
  - 1.8. *Local tax records of the City that contain information about a taxpayer's income or receipts.*
  - 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.*
  - 1.10. *Building plans of City-owned buildings or structures, as well as specific details of public security plans.*
  - 1.11. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
  - 1.12. *Plans to prevent or respond to terrorist activity, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).*
  - 1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

The information described in Sections 1.5 through 1.13 is a subcategory of Confidential Information called "Highly Restricted Information." Highly Restricted Information is subject to all requirements applicable to Confidential Information, but is also subject to additional restrictions as set forth in this Agreement.

The parties acknowledge that Confidential Information includes information disclosed prior to execution of this

Agreement as well as information disclosed after execution.

Notwithstanding the above, contracts between the Company and the City are not Confidential Information and will be considered public records, except for attached exhibits that: (a) meet the legal requirements for trade secrets; and (b) are clearly identified as such.

- 2. RESTRICTIONS AND REQUIREMENTS.** Each party shall comply with the following restrictions and requirements regarding Confidential Information:
- 2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by written agreement of the parties or by the written consent of the other party.
  - 2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party, other than an agent, subcontractor or vendor of the City or the Company who: (a) has a need to know such Confidential Information for purposes contemplated by this Agreement, and (b) has executed a confidentiality agreement incorporating substantially the form of this Agreement. Notwithstanding the foregoing, Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted of the other to any third party without the City's prior written consent.

- 2.3. Neither party shall use any Confidential Information of the other for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
  - 2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
  - 2.5. Each party shall use reasonable efforts to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Agreement.
  - 2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall notify the other party of the demand, and shall cooperate with and reasonably assist the other party in seeking a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
  - 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.
  - 2.8. Each party shall restrict employee access to the Confidential Information of the other party to those employees having a need to know for purposes of carrying out the business relationships contemplated by this Agreement.
  - 2.9. The Company shall comply with the City's Restricted Data Policy, a copy of which is posted on the City's website, and with any instructions or procedures issued by City key business units from time to time with respect to protecting specific types of Confidential Information.
  - 2.10. Each party shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Agreement. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Agreement, including compliance with the City's Restricted Data Policy.
  - 2.11. The Company shall further ensure that each person who obtains access to Confidential Information through the Company (including but not limited to Company's employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to this Agreement and the City's Restricted Data Policy.
- 3. EXCEPTIONS.** The disclosing party to this Agreement agrees that the receiving party ("Recipient") shall have no obligation with respect to any Confidential Information that the Recipient can establish:
- 3.1. Was already known to Recipient prior to being disclosed by the disclosing party;
  - 3.2. Was or becomes publicly known through no wrongful act of Recipient;
  - 3.3. Was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;
  - 3.4. Was used or disclosed by Recipient with the prior written authorization of the other party;
  - 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, Recipient shall first give to the other party notice of such requirement or request;

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3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

4. **DATA.** The Company will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Agreement (including metadata). Such data 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 this Contract.

5. **PUBLIC RECORDS.** Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the City is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. Gen. Stat. 132-1 et seq. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the City pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the City be liable to the Company for such release or disclosure.

In the event the City receives a request for disclosure of Confidential Information which the Company has specifically marked "Confidential" or "Proprietary" the City shall give the Company written notice of such request (the "Notice of Request for Disclosure"). In the event the Company has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Company shall within ten days after receipt of the Notice of Request for Disclosure notify the City in writing of its objection to disclosure and the basis therefor. The Company shall indemnify, defend and hold harmless the City from and against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the City in connection with any refusal by the City to disclose Confidential Information after receiving an objection to disclosure from the Company. If the City receives no written objection from the Company within ten days after the Company's receipt of a Notice of Request for Disclosure, the City shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.

Notwithstanding the foregoing, the parties agree that the computer database information that the City is required to disclose under N.C. Gen. Stat. §132-6.1 shall not be deemed Confidential Information, and that the City shall be entitled to disclose such information without notice to the Company.

6. **REMEDIES.** Each party acknowledges that the unauthorized disclosure of the Confidential Information of the other will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if a party breaches its obligations hereunder, the other party shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

7. **NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

For the City of Charlotte:

Kay Elmore  
Chief Procurement Officer  
City of Charlotte  
600 East Fourth Street, 9th Floor  
Charlotte, NC 28203

PHONE: 704.336.2524

FAX: 704.632.8252

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E-MAIL: \_\_\_\_\_

E-MAIL: [keltmore@ci.charlotte.nc.us](mailto:keltmore@ci.charlotte.nc.us)

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice of breach or default 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.

Any notice of a breach or default under this Agreement shall also be sent to:

For the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

For the City of Charlotte:

Adam Jones  
Office of the City Attorney  
600 East Fourth Street, 15<sup>th</sup> Floor  
Charlotte, NC 28203-2841

PHONE: 704.336.3012

E-MAIL: [amjones@ci.charlotte.nc.us](mailto:amjones@ci.charlotte.nc.us)

**8. MISCELLANEOUS.**

- 8.1. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to protection and disclosure of the Confidential Information. There are no other representations, understandings of agreements between the parties with respect to such subject matter. On the subject matter of this Agreement, it supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 8.2. AMENDMENT. No amendment or change to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.
- 8.3. GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, 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 of the above courts.
- 8.4. BINDING NATURE AND ASSIGNMENT. This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 8.5. SEVERABILITY. The invalidity of one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement 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 Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 8.6. WAIVER. No delay or omission by either party to exercise any right or power it has under this Agreement 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 Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision

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of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

8.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

8.8. TITLES OF SECTIONS. The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.

Nothing in this Agreement shall be deemed to eliminate or lessen any obligation either party may have at law with respect to protecting the confidentiality of Confidential Information, except as the provisions of this Agreement expressly authorize the release of Confidential Information.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

**[INSERT COMPANY NAME]**

**CITY OF CHARLOTTE:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT F – COMPANY BACKGROUND CHECK POLICY**

This **Exhibit F** is incorporated by reference into the Contract for Radios and Communication Equipment (the “Contract”) between the City of Charlotte (on behalf of itself and other Participating Public Agencies) and [Company Name] (the “Company”).

The Company will conduct such background checks respect to all personnel who will be working on-site at any Lead Public Agency or Participating Public Agency facility, or who will have access to Confidential Information. The Company will conduct such background checks prior to the personnel commencing work under this Contract, whether as part of the Company’s standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Lead Public Agency’s or a Participating Public Agency’s facility. Background checks will include at a minimum:

- a. Criminal records search,
- b. Identification verification; and
- c. Proof of authorization to work in the United States.

The Company agrees that if any personnel do not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The subcontractor will notify the Lead Public Agency or applicable Participating Public Agency immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the subcontractor shall contact the Lead Public Agency or applicable Participating Public Agency immediately.

**EXHIBIT G – SUBCONTRACTOR BACKGROUND CHECK POLICY**

This **Exhibit G** is incorporated by reference into the Contract for Radios and Communication Equipment (the “Contract”) between the City of Charlotte (on behalf of itself and other Participating Public Agencies) and [Company Name] (the “Company”).

The Company will require all subcontractors, including without limitation, [Subcontractor Name], to comply with the Background Check Policy set forth in this Exhibit with respect to all personnel who will be working on-site at any Lead Public Agency or Participating Public Agency facility or who will have access to Confidential Information.

Each subcontractor will conduct such background checks prior to the personnel commencing work under this Contract, whether as part of the subcontractor’s standard pre-employment screening practices or otherwise. The subcontractor will complete a background check on an annual basis for each person working at the Lead Public Agency’s or a Participating Public Agency’s facility. Background checks will include at a minimum:

- a. Criminal records search,
- b. Identification verification; and
- c. Proof of authorization to work in the United States.

The subcontractor agrees that if any personnel do not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The subcontractor will notify the Lead Public Agency or applicable Participating Public Agency immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the subcontractor shall contact the Lead Public Agency or applicable Participating Public Agency immediately.

**EXHIBIT H – FEDERAL CONTRACT TERMS AND CONDITIONS**

This Exhibit is attached and incorporated into the \_\_\_\_\_ Radios and Communication Equipment contract (the “Contract”) between the City of Charlotte and [COMPANY NAME] (the “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 XX – Vendor Debarment Certification is incorporated herein as Form [EXHIBIT LETTER].1 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:
  - a. 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.



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- b. 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)].
  - c. 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.
  - d. The Company's completed Form XX –Byrd Anti-Lobbying Certification is incorporated herein as Form [EXHIBIT LETTER].2 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.
11. **Remedies.**
- 11.1 **RIGHT TO COVER.**
- If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits), the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
  - b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

11.2 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.

11.3 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 the Contract.

11.4 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.

11.5 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.

**12. Termination for Convenience and for Cause.**

12.1 TERMINATION FOR CONVENIENCE.

The City may terminate the 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, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon 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.

12.2 TERMINATION FOR DEFAULT BY EITHER PARTY.

By giving written notice to the other party, either party may terminate the 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 the Contract, provided that, unless otherwise stated in the 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 the 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 the Contract and shall state the party's intent to terminate the Contract if the default is not cured within the specified period.

**13. Indemnification.**

**13.1 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 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 13 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).