



City of Charlotte

Agenda Date: 6/27/2016

Agenda #: 16.File #: 15-2171 Type: Business Item

Citywide Radios and Communication Equipment**Action:**

A. Approve unit price contracts for the purchase of radios and communication equipment for the term of three years to the following companies:

- Two Way Radio of Carolina,
- Motorola Solutions,
- Wireless Communications,
- Communications International, and

B. Authorize the City Manager to renew the contract for up to two, one-year terms with possible price adjustments and to amend the contract consistent with the City's business needs and the purpose for which the contract was approved.

Staff Resource(s):

Robert Campbell, Management & Financial Services
Jeff Stovall, Innovation & Technology

Explanation

- Public safety radios are the critical two-way voice communication for all public safety first responders, such as Fire, Medic, Police, and Sheriff.
- Radios also provide critical communications for City and Mecklenburg County field service employees and dispatchers. City Departments currently using radios include: Transportation, Solid Waste Services, Charlotte Water, CATS, and Aviation.
- The City's radio system relies heavily on software and imbedded firmware with which these radios must be compatible. All radio equipment and related components require interoperability with City, County, and surrounding jurisdictions' systems. Radios must be designed for high durability and reliability.
- Each radio manufacturer has developed specific methodology and software to perform system functions and control operations. Motorola holds the patent on the City's system, and all public safety radios must be compatible with the City's system.
- On December 11, 2015, Management & Financial Services, on behalf of the Charlotte Cooperative Purchasing Alliance (CCPA), issued a Request for Proposals (RFP); six responsive proposals were received in response to the RFP, and each offered different manufacturers, models and discount structures for various models of radios and peripherals.
- The Project Team, consisting of staff from Innovation & Technology, Fire, Police, Charlotte Water, and Solid Waste Services, evaluated the proposals and determined the service providers that best met the City's needs in terms of qualifications, experience, cost, and responsiveness to RFP requirements and other public entities that may choose to use the resulting contracts.
- Actual purchases will be determined by availability of departmental budgets and other funding sources. The quantity of radios purchased is highly varied and will be determined upon immediate

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- need of replacement radios or for additional radios through staff expansion of departments.
- The companies will be paid the unit prices set forth in the contracts, copies of which are available upon request.
 - The City may renew the contracts for up to two additional, one-year terms at prices to be negotiated based on market conditions.
 - Estimated annual combined contract expenditures are \$4,000,000.
 - An estimated 1,052 radios are to be purchased annually at an average cost of \$3,800 per unit.
 - On June 13, 2016, City Council approved a one-time purchase of Aviation radios to cover an immediate need for Airport operations. These radios were not previously covered on the Citywide contracts, but will be included going forward.

Background

- The CCPA is a cooperative purchasing program established by Management & Financial Services with the specific purpose of reducing procurement costs by leveraging aggregate purchasing volume to receive better pricing.
- CCPA contracts are available for the use and benefit of all entities that must comply with state purchasing laws (cities, counties, public and private schools, colleges and universities, non-profits, and all governmental entities).

Charlotte Business INClusion

No subcontracting goal is established because there are no subcontracting opportunities (Part B: Section 2.3 of the Charlotte Business INClusion Policy).

Fiscal Note

Funding: Various Departments' Operating Budgets

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**AGREEMENT TO PROVIDE
RADIOS AND COMMUNICATION EQUIPMENT**

This Contract for Radios and Communication Equipment (the "Contract") is entered into as of this 30th day of July, 2016 (the "Effective Date"), by and between Mobile Communications America, Inc. DBA Wireless Communications, Inc., a corporation doing business and incorporated in North Carolina (the "Company"), and the City of Charlotte, North Carolina (the "Lead Public Agency").

Statement of Background and Intent

- A. The Lead Public Agency on behalf of itself and 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 this Contract (herein "Participating Public Agency") through the Charlotte Cooperative Purchasing Alliance ("CCPA") issued a Request for Proposal for Radios and Communication Equipment, 269-2016-019 dated December 11, 2015 requesting proposals from qualified suppliers to provide the Lead Public Agency with fully functional Radios and Communication Equipment per Lead Public Agency requirements. This RFP, 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 January 26, 2016. 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 June 27, 2016 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:

A G R E E M E N T

- 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: Pricing Sheet
- Exhibit B: Software License
- Exhibit C: Specifications and Requirements
- Exhibit D: CCPA Administrative Fees and Reporting
- Exhibit E: Master Intergovernmental Cooperative Purchasing Agreement
- Exhibit F: Confidentiality Agreement
- Exhibit G: Company Background Check Policy
- Exhibit H: Subcontractor Background Check Policy

Each reference to this Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to Company in the Exhibits and Appendices shall be deemed to mean the Company.

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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. **“Lead Public Agency”** means the Charlotte-Mecklenburg Procurement Management Division.
- 2.17. **“License”** means the license agreement.
- 2.18. **“Motorola MotoTrbo”** means the MotoTrbo product line of two-way radios by Motorola Solutions, Inc.
- 2.19. **“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.
- 2.20. **“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).
- 2.21. **“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.
- 2.22. **“Open Source Software”** means software with either freely obtainable source code, license for modification, or permission for free distribution. Also called “freeware” or “shareware.”
- 2.23. **“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.
- 2.24. **“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.
- 2.25. **“Products”** means all Software and all Hardware (both as herein defined).
- 2.26. **“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”.
- 2.27. **“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.
- 2.28. **“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.
- 2.29. **“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.
- 2.30. **“Software License”** means the license agreement attached to this Contract as **Exhibit B**.

2.31. **“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. 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.

4. 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.

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 discount for all Non-Core Products set forth in **Exhibit A**. The fixed percentage discount 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
M&FS 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. 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 2% of all expenditures 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 the close of each calendar quarter and shall include a report as mutually agreed by the parties outlining all sales through the CCPA Program.

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 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; and
 - 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 / CCPA'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 any of them 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 Work 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; or (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 a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the Lead Public Agency, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the Lead Public Agency and each of the Lead Public 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) or any other legal theory or principle, in connection with an Infringement Claim.
- 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 I&T 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 purchase order number, 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 Contract shall remain the property of the Company until the Lead Public Agency / Participating Public Agency physically inspect, actually use and accept the Products. In the event Products provided to the Lead

Public Agency / Participating Public Agency does not comply with the Contract, the Lead Public Agency shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply, the Lead Public Agency / Participating Public Agency reserve the right to cancel the Service and rescind any related purchase of Products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the Lead Public Agency 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, marital status, familial status, sexual orientation, gender identity, gender expression, 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 quarterly usage reports in Excel format to Procurement Management by the 30th of January, April, July, and October. The reports must include but not limited to Lead Agency Department, Participating Public Agency name, category, product description, product number, unit of measure, applicable percentage discount, fixed unit price, and extended total. The Lead Public Agency / Participating Public Agency reserve the right to request additional information.
- 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 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). The Company will require each of its subcontractors to comply with the Subcontractor Background Check Policy set forth in **Exhibit H** 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 Contract 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 F** 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 attached to this Contract as **Exhibit D**.

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 Proposal, 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. RESERVED.

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:

For The Company:	For The City:
David Walton	David Tate
Mobile Communications America, Inc.	City of Charlotte
4800 Reagan Drive	Procurement Management
Charlotte, NC 28206	600 East Fourth Street
	Charlotte, NC 28202
Phone: 704-597-5220	Phone: 704-336-5669
Fax: 704-597-7050	Fax: 704-632-8520
E-mail: dwalton@wirelessnc.com	E-mail: dtate@charlottenc.gov
With Copy To:	With Copy To:
	Cindy White
	City of Charlotte
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: cwhite@charlottenc.gov

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 **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.

51.10 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.

51.11 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 3 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

51.12 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.

51.13 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.

51.14 E-VERIFY. 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.

51.15 IRAN DIVESTMENT ACT. 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; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

52. GRANTS. The Lead Public Agency or a Participating Public Agency may be required to include certain supplemental terms and conditions for purchases that are made with grant funding or similar funding source. The Lead Public Agency or Participating Public Agency will provide any such terms and conditions to Company at or before the time the Lead Public Agency or Participating Public Agency places an order. If the Lead Public Agency or Participating Public Agency provides such terms and conditions at or before the time of placing an order, and Company accepts the order, such

terms and conditions shall be deemed to apply to that order. Company will not unreasonably withhold approval of proposed grant terms and conditions.

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Contract to be executed by its duly authorized representative, all as of the date first set forth above.

**MOBILE COMMUNICATIONS
AMERICA, INC:**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

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

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

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

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

**THIS INSTRUMENT HAS BEEN PRE-AUDITED IN THE MANNER REQUIRED BY LOCAL
GOVERNMENT BUDGET AND FISCAL CONTROL ACT.**

**CITY OF CHARLOTTE
MANAGEMENT & FINANCIAL SERVICES**

BY: N/A – PURCHASE ORDERS WILL BE ISSUED AS NEEDED
(Signature)

Exhibit A – PRICING SHEET

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 Mobile Communications America, Inc. (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 Hardware, Services, and Software at the prices set forth below. All Hardware purchased pursuant to the Contract shall comply with the Specifications and Requirements, including those set forth in **Exhibit C**.

Exhibit B - LICENSE

This **Exhibit B** 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" or "Licensee") and Mobile Communications America, Inc. (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.

SECTION 1 GRANT OF LICENSE

- 1.1 Subject to the provisions of this Exhibit and the payment of applicable license fees, Company grants to Licensee a personal, limited, and non-exclusive license to use the Software, in object code form, and the Documentation, provided that Embedded Software shall be used solely in connection with Licensee's use of the Designated Products. This License does not grant any rights to source code.

SECTION 2 LIMITATIONS ON USE

- 2.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement. Notwithstanding the foregoing, Company acknowledges and agrees that: (a) Licensee operates a public safety wireless network, and is permitted to use the Software to provide service to multiple entities that provide public safety related services in the Licensee's region; and (b) Licensee is further permitted to transfer equipment with Embedded Software to other entities that use the public safety wireless network, and to allow such agencies to use Company Software to manage their device use, provided that Licensee shall have each transferee sign a transfer form to be provided by Company upon request, obligating the transferee to be bound by this Agreement. Company shall not require any payment, on the transfer form or otherwise, as a condition of such transfers.
- 2.2. Except as otherwise permitted under this License or the Confidentiality Agreement, Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Company's proprietary rights; or (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or use Embedded Software on any machine except as expressly authorized by this Agreement. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the use of the Software as authorized under this License.
- 2.3. Unless otherwise authorized by Company in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Embedded Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Embedded Software installed in one

unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Company of the temporary transfer and identifies the device on which the Embedded Software is transferred. Temporary transfer of the Embedded Software to another device must be discontinued when the original Designated Product is returned to operation and the Embedded Software must be removed from the other device. If requested by Company in writing, Licensee must provide prompt written notice to Company at the time temporary transfer is discontinued.

SECTION 3 OWNERSHIP AND TITLE

Company, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassembles, emulations to or derivative works from the Software or Documentation, whether made by Company or another party, or any improvements that result from Company's processes or, provision of information services). All intellectual property developed, originated, or prepared by Company in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Company, and Licensee will not have any shared development or other intellectual property rights.

SECTION 4 TERM AND TERMINATION

Licensee's right to use the Software and Documentation will begin when the Contract is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Company, unless Licensee breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the breach from Company, in which case this License and Licensee's right to use the Software and Documentation for which the City is in breach may be terminated immediately upon notice by Company.

SECTION 5 PRESERVATION OF COMPANY'S PROPRIETARY RIGHTS

Company, the third party manufacturer of any Hardware, and the copyright owner of any Non-Company Software own and retain all of their respective proprietary rights in the Hardware and Software, and nothing in this Agreement is intended to restrict their proprietary rights. All intellectual property developed, originated, or prepared by Company in connection with providing to City the Hardware, Software, or related services remain vested exclusively in Company, and this Agreement does not grant to City any shared development rights of intellectual property. Except as explicitly provided in this License, Company does not grant to City, either directly or by implication, estoppel, or otherwise, any right, title or interest in Company's proprietary rights. City will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Exhibit C – SPECIFICATIONS AND REQUIREMENTS

This **Exhibit C** 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 Mobile Communications America, Inc. (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.

- 1. Scope of Work.** The Company shall provide Radios and Communication Equipment as set forth in the RFP in a timely manner. This shall include, but not be limited to, providing all Products and Services specified in the RFP as may be required for a period of three (3) years after the Contract effective date to all City of Charlotte Departments, Mecklenburg County Departments, and other Participating Public Agencies. The Lead Public Agency at its option may extend the Contract for two (2) additional one-year extensions unless the Company objects in writing at least ninety (90) days prior to the beginning of the extension term. With limited exceptions as may be explicitly stated in this Contract, including Sections 3 and 52, the Company shall agree to receive all orders from the Lead Public Agency and Participating Public Agencies and to deliver items ordered to a specified Lead Public Agency and Participating Public Agency address.

All Products and component parts furnished under the Contract shall be new, shall meet all requirements of these Specifications and shall operate in full compliance with these Specifications.

- 2. Product Specifications.** Each Product capable of operating for the City of Charlotte shall meet the following specifications:

2.1 Portable Radios.

GROUP 4 - MOTOTRBO 7000 SERIES PORTABLE RADIOS				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
4.1	All Group 4 Portable Radios shall be brand specific or equal for the MotoTrbo 7000 Series and for the following models: <ul style="list-style-type: none"> • XPR 7380 • XPR 7580 	X		
4.2	IMPRES Hi-Cap Li-ion 2150 mAH Battery (PMNN4409) or equal	X		
4.3	Slim IMPRES Li-ion 1500 mAH Battery (PMNN4407) or equal	X		
4.4	IMPRES Hi-Cap Li-ion FM 2300 mAH Battery (NNTN8129) or equal	X		
4.5	All radios, including "or equal" proposed radios, must be compatible with the CLT Aviation MotoTrbo Link Capacity Plus radio system.	X		
4.6	The Company shall provide proof of being an authorized reseller of these types of radios.	X		

ACCESSORIES				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
6.1	Regardless of the Group of Portable Radios, the Company shall provide pricing for all optional OEM accessories including the following at a minimum:	X		
6.2	Programming Cables;	X		
6.3	Antennas;	X		
6.4	Batteries;	X		
6.5	Single-bay Battery Charger	X		
6.6	Multiple-bay Battery Charger	X		
6.7	Vehicular Battery Charger	X		
6.8	Remote Speaker Microphone;	X		
6.9	Remote Speaker Microphone with Antenna;	X		
6.10	Wired Headset	X		
6.11	Wireless/Bluetooth Headset	X		
6.12	Carrying Cases	X		
6.13	Belt Clips	X		
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.	X		

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

2.2 Mobile Radios/Control Stations

GROUP 9 - MOTOTRBO 5000 SERIES MOBILE RADIOS				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
11.1	All MotoTrbo 5000 Series Mobile Radios shall be brand specific or equal for the following models: <ul style="list-style-type: none"> • XPR 5580 • XPR 5380 	X		
11.2	All radios shall be supplied complete with the following for a complete working solution: <ul style="list-style-type: none"> • Microphone; • External Speaker; • Cables; • Fusing; • Mounting Hardware; • Coaxial Cable; • Antennas; • Installation Services. 	X		
11.3	All radios, including “or equal” proposed radios, must be compatible with the CLT Aviation MotoTrbo Link Capacity Plus radio system.	X		
11.4	The Company shall provide proof of being an authorized reseller of these types of radios.	X		

ACCESSORIES				
SPEC #	SPECIFICATION	COMPLIANCE		
		YES	NO	EXCEPTION
13.1	The Company shall provide pricing for all optional OEM accessories, including the following at a minimum:	X		
13.2	Cables: <ul style="list-style-type: none"> • Data Cables; • Extension Cables; • Adapters; • Power Cables; • Programming Cables. 	X		
13.3	Antennas	X		
13.4	External Speakers	X		
13.5	Public Address Kits	X		
13.6	Desktop Microphone (Control Stations Only)	X		
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.	X		

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

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 internal integrity, functionality and usability and other attributes as originally delivered.
4. **Delivery Personnel.** All delivery personnel of the Company may be subject to background checks at the discretion of the Lead Public Agency and Participating Public Agency. Proposals shall include company policies regarding selection of personnel who will be frequenting Lead Public Agency and Participating Public Agency facilities.
5. **Company Personnel Removal or 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.
6. **Applicable Laws.** The Company must be familiar with, have a working knowledge of, and comply with all federal, state, and local laws, statutes, ordinances and regulations as applicable to the service requirements of this RFP. These shall include the rules, regulations and interpretations of the North Carolina Department of Labor relative to Occupational Safety and Health Standards.
7. **Reporting Requirements.**
 - 7.1 **Project Reporting Requirements.**

The Company shall provide 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 this Exhibit.
 - 7.2 **Environmental Reporting Requirements.**

The Company shall furnish quarterly usage reports showing a summary of the ordering and/or history of each City of Charlotte department for the previous quarter to the Finance Office - Procurement Management. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, City department, and total dollars per department. The City reserves the right to request additional information, if required, when reviewing contract activity.
 - 7.3 **CCPA Quarterly Usage Reports.**

The Company shall furnish such reports as are required by Exhibit D.

Exhibit D – CCPA ADMINISTRATIVE FEES AND REPORTING

This **Exhibit D** is incorporated into and made a part of the Contract for Radios and Communication Equipment (“Contract”) between the City of Charlotte (the “City”) and Mobile Communications America, Inc. (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.

The Company shall pay to CCPA an administrative fee of 2% for all Lead Public Agency and Participating Public Agency sales volume within thirty (30) calendar days of the end of each calendar quarter set out in this Contract.

The Company shall furnish electronic quarterly usage reports showing a summary of the ordering and/or history of the Lead Public Agency and each Participating Public Agency department for the previous quarter to the Lead Public Agency within thirty (30) calendar days of the end of each calendar quarter. The reports must include but not limited to Lead Agency Department, Participating Public Agency name, category, product description, product number, unit of measure, applicable percentage discount, fixed unit price, and extended total. The Lead Public Agency / Participating Public Agency reserve the right to request additional information, if required, when reviewing Contract activity.

Exhibit E - MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This **Exhibit E** is incorporated into and made a part of the Contract for Radio and Communication Equipment (“Contract”) between the City of Charlotte (the “City”) and Mobile Communications America, Inc. (the “Company”). Some of the terms under which other agencies participate in the Charlotte Cooperative Purchasing Alliance appear in this **Exhibit E**.

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 F - CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Confidentiality Agreement") is made and entered into as of this 30th day of July, 2016 (the "Confidentiality Agreement Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation ("the City") and Mobile Communications America, Inc., a corporation doing business and incorporated in North Carolina (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 Confidentiality 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. Notwithstanding the forgoing, in order for materials in a bid or proposal submitted by the Company to be considered trade secrets, they must be submitted to the City in a separate, sealed envelope (not co-mingled with the remainder of the bid or proposal), and must have the following phrase conspicuously displayed on each page that contains trade secrets: "CONFIDENTIAL TRADE SECRET / DO NOT DISCLOSE."
 - 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) Driver's license (driver's 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 contains 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 obtained from the City that is exempt from disclosure under the North Carolina public records laws.*

The information described in Sections 1.5 through 1.12 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 Confidentiality Agreement.

The parties acknowledge that Confidential Information includes information disclosed prior to execution of this Confidentiality 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 purpose of performing work contemplated by written agreements between the City and the Company, and (b) has executed a confidentiality agreement incorporating substantially the form of this Confidentiality Agreement. Notwithstanding the 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 Confidentiality 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 Confidentiality 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 their jobs. For Company employees, "need to know" shall mean having a need to know in order to: (a) fulfill the Company's contractual obligations to the City, or (b) resolve a dispute with the City. For City employees, "need to know" shall mean a need to know in order to: (a) use, test, evaluate or manage services or products provided by the Company, (b) to fulfill the Company's obligations to the City, or (c) to resolve a dispute with the Company.
 - 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 Confidentiality 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 Confidentiality 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 Confidentiality Agreement and the City's Restricted Data Policy.
3. **EXCEPTIONS.** The disclosing party to this Confidentiality 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;
 - 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 Confidentiality 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 Confidentiality 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 Confidentiality 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 forgoing, 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 Confidentiality 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 following address:

For the Company:

David Walton
Mobile Communications America, Inc.
4800 Reagan Drive
Charlotte, NC 28206
Phone: 704-597-5220
Fax: 704597-7050
E-mail: dwalton@wirelessnc.com

For the City:

David Tate
Procurement Services Division
600 East Fourth Street
Charlotte, NC 28202
Phone: 704-336-5669
Fax: 704-632-8520
E-mail: dtate@charlottenc.gov

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 breach or default under this Confidentiality Agreement shall also be sent to:

For the Company

For the City

Cindy White
Office of the City Attorney
15th Floor, CMCG
600 East Fourth Street
Charlotte, N.C. 28203-2841
Phone: 704-336-3012
Fax: 704-336-6644
E-mail: cwhite@charlottenc.gov

E-mail:

8. MISCELLANEOUS

- 8.1. *ENTIRE AGREEMENT.* This Confidentiality 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 Confidentiality Agreement, it supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 8.2. *AMENDMENT.* No amendment or change to this Confidentiality Agreement shall be valid unless in writing and signed by both parties to this Confidentiality Agreement.
- 8.3. *GOVERNING LAW AND JURISDICTION.* North Carolina law shall govern interpretation of this Confidentiality Agreement and all other matters relating to this Confidentiality Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Confidentiality Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Confidentiality 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 court sitting in Mecklenburg County, North Carolina.
- 8.4. *BINDING NATURE AND ASSIGNMENT.* This Confidentiality Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign any rights or obligations under this Confidentiality 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 of the phrases, sentences, clauses or sections contained in this Confidentiality Agreement shall not affect the validity of the remaining portion of the Confidentiality Agreement so long as the material purposes of the Confidentiality Agreement can be determined and effectuated. If any provision of this Confidentiality 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 Confidentiality 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 Confidentiality 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 Confidentiality 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 of this Confidentiality Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 8.7. *COUNTERPARTS.* This Confidentiality 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 Confidentiality 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 Confidentiality 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 Confidentiality Agreement to be executed on the date first written above.

**MOBILE COMMUNICATIONS
AMERICA, INC.**

CITY OF CHARLOTTE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Exhibit G – COMPANY 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 Mobile Communications America, Inc. (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 H – SUBCONTRACTOR BACKGROUND CHECK POLICY

This **Exhibit H** 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 Mobile Communications America, Inc. (the “Company”).

The Company will require all subcontractors 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.